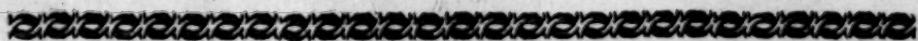


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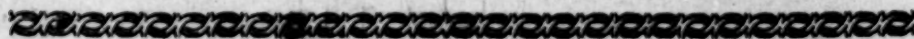
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ADDITIONAL PETITION

O F

Mess. ROBERT SCOTT-MONCRIEFF and DAVID DALE,
Cashiers at Glasgow for the ROYAL BANK of Scot-
land, and of WILLIAM SIMPSON, Cashier for the said
Bank at Edinburgh.



STATE OF NEW YORK

ADDITIONAL PETITION

OF

ALFRED ROBERT GOTT-MONCKHEFF, and DAVID DAVE,
Cashiers at Glasgow for the Royal Bank of Scot-
land, and of WILLIAM SIMPSON, Cashier for the said
Bank at Edinburgh.

IN SENATE,

MAY 30. 1795.

Add. PET. *Cashiers of Royal Bank,*

Against.

Inner-bouje Interlocutor.

John Anderson, W.S. Agent.

M.

UNTO THE RIGHT HONOURABLE,
The Lords of Council and Session,

T H E

ADDITIONAL PETITION

O F

Mess. ROBERT SCOTT MONCRIEFF and DAVID DALE,
Cashiers at Glasgow for the ROYAL BANK of Scot-
land, and of WILLIAM SIMPSON, Cashier for the said
Bank at Edinburgh,

HUMBLY SHEWETH,

THAT, when the cause now depending before your Lord-
ships, in which the petitioners are pursuers, and Mess.
Dunlop, Houstoun, Gammill, and Company, Bankers in
Greenock, defenders, was advised by the Court upon
informations for the parties, the decisions went against the peti-
tioners, either upon the footing of Mr Dunlop having been exclu-
ded, by the terms of the contract of copartnery between the de-
fenders, from binding them in any transaction whatever; or
A 2dly,

2dly, That, from the circumstances of the present case, he had not, *de facto*, bound them in the transaction in question.

Jan. 14. 1795.

As the latter opinion was founded upon a series of facts, asserted, without evidence, by the defenders; and of a denial of those facts maintained by the pursuers; accompanied with every possible oblique hint and innuendo, to create a belief of a bad faith, and of a grasping at an undue advantage on the part of the pursuers in the whole of the business; so, in reclaiming against the interlocutor, the pursuers prayed the Court for a proof, to ascertain, by legal evidence, the facts material to the issue. This was accordingly, after considerable opposition, allowed to both sides, by the following interlocutor, of this date: ‘ The Lords having resumed the consideration of the pursuers petition, with the
 ‘ condescendence given in for them, and the answers thereto for the defenders; they, before answer, ordain the pursuers to exhibit and produce to David Murray writer in Edinburgh, the letters of correspondence wrote to William Simpson their cashier, by Robert Scott-Moncrieff and David Dale, their cashiers at Glasgow, or by Mess. Scott-Moncrieff and Dale, from
 ‘ the 1st January 1792 to the 21st March 1793 inclusive, in so far as any such letters or passages thereof bear any relation to the transactions of the pursuers, or their said cashiers, with the
 ‘ defenders or any of the then partners of their Banking Company within the said period: And in like manner, they ordain the defenders to exhibit and produce to the said David Murray, all
 ‘ entries in their books of account and transactions between them and James Dunlop, then one of the partners of their Company, and their agent at Glasgow, from the said 1st January 1792 to the 21st March 1793 inclusive: And they authorise and appoint
 ‘ the said David Murray to report to the Court whatever may appear to him, from inspection of the said letters or of the said books, to be any wise material to this cause, or tending to throw
 ‘ light upon the points in dispute between the parties: And further, of consent of the defenders, the Lords, before answer, allow a proof to both parties, by the witnesses mentioned in the
 ‘ condescendence and answers, of the facts and circumstances therein set forth; and to that effect grant diligence, at both parties instance, against the said witnesses, and also against havers
 ‘ for recovering all writings condescended on or referred to in the said condescendence and answers; and grant commission to the
 ‘ Sheriffs

‘ Sheriffs deputies or substitutes of the shires of Edinburgh and
 ‘ Lanark, for taking the examination of the said witnesses and
 ‘ havers, at Edinburgh and Glasgow, any lawful day or days be-
 ‘ twixt and 12th February next, to be then reported to the
 ‘ Court; and within ten days after the said proof shall be so re-
 ‘ ported, the Lords allow the pursuers to give in an additional pe-
 ‘ tition, stating what they may have to offer in consequence of
 ‘ such proof.’

Prorogations of the term for proving were afterwards granted of Feb. 20. & Mar. 3.
 these dates. 1795.

The petitioners are now to avail themselves of your Lordships indulgence, by submitting what occurs to them upon the proof that has been taken and reported in consequence of these interlocutors. And from this proof, they flatter themselves they are now intitled not only to look for a calm and deliberate discussion, without being met with any of the former vague and unfounded allegations, or declamatory matter from the other side, but with some confidence to expect, that the whole cause will present itself in a very different light from what it formerly did to your Lordships.

But, before proceeding to state the import of this evidence, it may be proper to consider what influence it can have on the question, That the contract of copartnery between the defenders gave no special power to Mr Dunlop to bind the Company; for this was taken notice of at advising, as a circumstance decisive against the pursuers. The defenders themselves had not carried their argument directly this length; but they referred to decisions, as showing, from analogy, that Mr Dunlop could have no power to bind the Company in such a case as this. And although the pursuers, in their information, stated, in general, what they conceived to be the law in this respect as to copartneries, yet, holding it to be well understood, they did not descend to any particular authorities in support of it. Now, however, as it has been judged unfavourable to their cause, it will be necessary more particularly to attend to the decisions resorted to on the other side, as well as to state others, which, they apprehend, must be allowed to bear more immediately upon the case: and indeed it will at once occur to your Lordships, that if limitations and restrictions in contracts of copartnery are in general to operate against third parties, and that such rule is to be applied to this case, it is not only a preliminary consideration, but would, in that view, supersede any other question.

The

The first decision noticed by the defender, is reported by Lord Kames in his Select Decisions, 4th January 1766, *Hunter contra Chalmers and Company*; and the circumstances of the case are these: 'George Chalmers and Company, extensive dealers in the corn-trade, employed Philip Scott, who kept a grocery shop in Berwick, to purchase corn for them in Berwickshire and Northumberland. *In these counties, the rents being paid in money, the tenants must have ready money for their corn, in order to pay their rent.* Chalmers and Company accordingly took always care to lodge cash in the hands of Philip Scott, to enable him to pay ready money for all the corn they commissioned him to purchase, for which he was to have two and a half per cent. Business was thus carried on for several years, till Philip Scott became bankrupt, indebted to the company, and indebted to several tenants in Berwickshire, from whom he purchased corn without paying the price, somewhat above L. 1000. These tenants, in name of John Hunter their assignee insisted in a process against Chalmers and Company, for payment of this sum, upon the following medium, That Philip Scott was factor or agent for the defenders, who consequently are liable to pay the price of the corn purchased for their behoof.'

The slightest attention to these particulars must show that this case is totally wide of the present: There, it was not only strictly a ready-money transaction, which superseded any security whatever, but the sellers of the grain could not be understood to know any thing about Chalmers and Company, nor had they ever any communication with the company, from which they could recognise Scott as their agent. To bring it near to the present case, therefore, were to suppose, that the company had wrote to the several grain-sellers, that they had appointed George Chalmers, the first in their firm, to transact with them; and that George Chalmers had accordingly, as agent for the company, transacted with them; and had the case stood thus, it may reasonably be presumed, from the difficulty which seems otherwise to have attended it, that a very different decision would have followed, and that upon such obvious grounds as would have rendered it unworthy of a place in the Select Decisions of the learned Reporter.

The only other case mentioned by the defenders is one said to have been tried before Lord Mansfield and a special jury at Guildhall,

hall, in December 1774; the circumstances attending which, however, are very shortly, and it would seem, very imperfectly stated; but so far as can be gathered from it, it would appear to amount to this: That Alexander Fordyce, who was concerned with a number of copartners in some business, the nature of which is not mentioned, had engaged in a speculation on his own private account, and had given a guarantee of the house; although of his own writing and signature, to Mess. Hope and Company, who were concerned with him in the speculation; and the question came to be, Whether the house were bound by such guarantee?

Now the defect here is, that the case does not state what relation there was between the business of the copartners and the speculation entered into by Fordyce. If the latter was totally unconnected with, and of a nature different from the business of the house; then, without doubt, Hope and Company could not alledge *bona fides* in relying upon the security of the house; for as well may it be said, that the partner of any mercantile company could pledge the security of the concern in his own contract of marriage, or in a cautionary obligation for a friend, or, in short, in any other way that he could bind himself individually, a doctrine which was never attempted to be held out by the pursuers: on the contrary, they readily subscribe to what appears to have been laid down by Lord Mansfield in the above case, that any trick or connivance between the partner and the person with whom he deals, to cheat the house, by drawing them into a guarantee clandestinely, should make the guarantee void; and in like manner, that gross negligence ought to be equally fatal, that is, such a negligence as seems to have occurred in the case of Fordyce, which excludes a fair and honest reliance upon the Company being any wise concerned in the transaction, or informed of it by means of the partner contracting, according to the rules of good faith and understanding in commercial concerns.

But, on the other hand, the same rules of good faith and understanding will not suffer a Company to repudiate the transactions of one of the partners, managers, or agents, to the prejudice of third parties, who have relied *bona fide*, and upon reasonable grounds, that they were acting for and on account of such Company; for it is the duty of the Company to be cautious of their own partners, and those they entrust in the management of their business; and should any fraud be committed by them, in any business.

business relating to the copartnery, it is not to hurt the public, who honestly and uprightly deal and transact with them, but must affect the Company itself, who put them forth in characters that attracted this confidence.

In illustration of this, numberless authorities might be quoted; but the pursuers shall content themselves with an equal number with the defenders, and, like them too, the one a Scottish, and the other an English case.

The first of them is reported in the Faculty Collection, 14th June 1766, Robert Dewar against Patrick Millar and Mess. Gibson and Balfour merchants in Edinburgh; and the facts are thus stated: ' John Weir, Patrick Millar, and Mess. Gibson and Balfour, entered into a copartnery, principally for carrying on the linen-trade, by the firm of John Weir and Company.

' This branch of business was carried on under the management of Weir, who, as manager, was to have a certain allowance, exclusive of all charges. The capital stock of the Company was to extend to L. 2400 Sterling, one half to be advanced by Weir, a fourth by Millar, and the other fourth by Gibson and Balfour.'

' In December 1764, Robert Dewar glazier in Edinburgh gave John Weir L. 160, for which he received a bill, payable six months after date, accepted by Weir, under the company's firm.

' In May 1765, before this bill was payable, Weir stopped payment; and Dewar being about to charge the other partners for payment of his bill, was stopped by a suspension, presented in their name, which was remitted to Lord Kames, to discuss the reasons on the bill; and his Lordship, on the 22d January 1766, having considered the contract of copartnery, by which no power was given to Weir, the managing partner, to borrow money, but only to buy and sell; and having also considered the dependence of the bills accepted by Weir under the firm of the company, which bills appear all to be for goods purchased by Weir under the firm of the company; finds, That the defenders are not liable for payment of the bill in question.'

This interlocutor was brought under review of the Court by Dewar, the pursuer, who admitted, that the bill was for money lent by him to Weir; but the substance of his plea was, That as the firm of the company was adhibited to the bill, and their contract of copartnery not registered, so he could not know any thing contained in it, and he was therefore intitled to hold the company

as

as liable. But the argument on the other side, maintained by the first Counsel then at the bar, is worthy of observation, and shows how infinitely stronger that case was than any thing that can here be set up for the defenders. The pursuer shall therefore take the liberty of stating it at length.

‘ Answered for Millar, Gibson, and Balfour, That none of them were engaged in any general trade or copartnership with Weir. Their connection with him was confined to the linen-trade. They did not dispute but Weir was in the practice of accepting bills under the firm of Weir and Company, and that they were in the practice of honouring these acceptances; but such bills were all granted relative to the copartnership-business; in managing of which, Weir, as acting partner, must necessarily grant acceptances for the value of goods bought for behoof of the Company; but they contended, that Weir was not in the use of borrowing money for the Company, or giving bills for the same; nor did ever any of the partners honour any bills accepted by Weir for borrowed money, or upon any other account than for the price of goods bought for the Company’s behoof: *That Dewar did not alledge he had ever dealt with the company in the way of their copartnership-business, or ever furnished them with a single article of goods; and as the bill in question was granted for money borrowed and applied by Weir for his own private behoof, the Company could not be liable.*

‘ *That every obligation or agreement entered into with Weir, in relation to purchases or sales of the commodities in which the Company dealt, will no doubt bind the Company; but it will not from thence follow, that every deed of Weir’s under the firm of the Company must rear up an obligation against them. If he had purchased an estate at an extravagant price, and granted bills to the seller for the price under the firm of the Company, the Company would not have been subjected in payment of these bills, as that would have been giving Weir the power of subjecting the Company as cautioners to his own private transactions, a thing which he had neither title nor authority to do.*

‘ That the borrowing money is no act of ordinary administration in a Company such as that now under consideration. It may be true, that bankers or merchants, properly so called, are accustomed to take money upon bills; but the present Company act in a very different capacity, and cannot be considered as
‘ bankers

‘ bankers or properly merchants, but rather as shopkeepers or
 ‘ warehousemen, for buying and selling of goods : and when the
 ‘ Company had occasion to borrow money, the whole partners
 ‘ signed the securities granted for such loans ; and although Weir
 ‘ had full power to manage ordinary occurrences in the copart-
 ‘ nery-trade, he could not bind the partners in matters out of the
 ‘ way of their common business ;—he could not dissolve the Com-
 ‘ pany ;—he could not submit the concerns of the Company ;—
 ‘ he could not alter the nature of the trade ;—neither could he
 ‘ borrow money, unless particularly authorised.

‘ The circumstance of the contract of copartnery not being re-
 ‘ gistered, cannot alter the argument one way or other. There is
 ‘ no particular register established in Scotland for copartnery-
 ‘ contracts ; and registration only takes place on account of dili-
 ‘ gence and preservation.

‘ It was further argued for the suspenders, *That Dewar seems to*
 ‘ *have lent his money entirely upon the faith of Weir. He does not al-*
 ‘ *ledge to have conversed with any of the other partners upon the sub-*
 ‘ *ject, or so much as asked them if they were engaged in a Company*
 ‘ *with Weir. He could not discover, from the form of Weir’s ac-*
 ‘ *ceptance, who were his copartners, nor did he ever see the contract*
 ‘ *of copartnery ; so that he must have had his information as to all these*
 ‘ *particulars from Weir alone, upon whose word, faith, and veracity,*
 ‘ *he has solely depended, and not upon any of the other partners, to*
 ‘ *whom he does not alledge he ever mentioned this matter.*

‘ That in this country tradesmen and manufacturers have but
 ‘ small stocks, and are therefore unable to carry on the different
 ‘ branches of their business without the assistance of partners.
 ‘ These partners are often merchants, and people of credit, en-
 ‘ gaged in other branches of business ; so that, from the nature of
 ‘ the thing, it must be the inferior people who are the acting
 ‘ partners in such companies, and consequently, of necessity,
 ‘ must be trusted with the firm of the Company ; but it cannot
 ‘ from thence, with any justice, be argued, that the whole sub-
 ‘ stance of such merchants, or others, as assist manufacturers in
 ‘ that way, is at the mercy of the tradesmen with whom they are
 ‘ engaged. Such a doctrine would be ruinous and destructive to
 ‘ the trade and credit of this country.’

Notwithstanding the apparent strength of this case, and the for-
 cible arguments in support of it, which the pursuers readily ad-
 mit

mit to be striking, they nevertheless appear to have been overruled by the most deliberate and solemn decision; for the report bears, ' The Lords altered the Lord Ordinary's interlocutor, repelled the reasons of suspension, found the letters orderly proceeded, and decerned. A reclaiming petition was presented, upon advising of which, with answers, memorials were ordered; and upon the cause being again advised, the Lords adhered to their former interlocutor.'

The pursuers have no occasion to carry their arguments the length that this decision would evidently bear them out in; for, on the closest attention to the circumstances of the present case, as they are now proved to stand, it must be plain, that what was admitted by the able counsel in their pleadings, in the above case, as sufficient to bind their clients, is perfectly decisive against the present defenders; namely, ' That every obligation or agreement entered into with Weir, *in relation* to purchases or sales of *the commodities* in which the Company dealt, will no doubt bind the Company.' It will, however, no doubt be said, that there the firm of the Company was used, which is not the case here; but the pursuers will take the liberty of shewing, in the sequel, that the firm of the present Company does not appear to have been used on any occasion, or at least that it was as strictly pledged in form, as well as substance, in the obligation or agreement in question, as in any of the bank-notes or other paper issued by the defenders.

The pursuers shall now state the other case alluded to, which was determined before Lord Kenyon, at the sittings in Michaelmas term 1794; and, although taken from the newspapers reported, they have good information that it is correct. The parties were, Lewen and others *versus* East India Company, and the circumstances these: ' Mr Gibbs opened the pleadings. This was an action on the case, and the declaration stated, The plaintiffs were owners of a ship called the Vansittart, which was chartered by them to the East-India Company, to be used in trade, or in warfare. The declaration also stated, that the Company had a power to displace the master and other officers, if it should be necessary. By the terms of the charter-party, the Company were also at liberty to receive or deliver out any goods at any port or place in Europe, or in Africa, on this side of her consigned course. It was then alledged, that the Company, wrongfully and unjustly, without the consent of the owners, employed

Star, Dec. 17. 1794.

‘ ployed this ship on a voyage and service, not such as was contained in the charter-party, but on a voyage of observation and discovery, for the purpose of exploring the Streights on the east of the island of Banca, whereby the ship was lost, and for the recovery of the value of which this action was brought.

‘ On the other side, he understood that it was to be contended, that this was an act done with the consent of the owners, who brought this action; and that therefore the defendants were not bound to pay.

‘ It was for them to show that, which he apprehended they could not, because he fancied it did not exist, *as the owners were strangers to the transaction.*

‘ Captain Wilson, who commanded the Vansittart East Indiaman, was here examined. He said, he was ordered by the Company to make a voyage of discovery and observation on the east of the island of Banca: He made a number of traverses; and when he was making the last he intended to make, the ship struck on a rock, and was totally lost: He was employed upon this business about eight or ten days: He was at the same time on a voyage from Madras to Canton in China, and the voyage was rendered more dangerous by this course: He was to be careful not to risk his voyage to China: One of the reasons why he was fixed upon for making the said discoveries was, because the Vansittart was the earliest ship that sailed on that voyage.

‘ Mr Lewen senior was the husband of the Vansittart: He saw the old gentleman very seldom: *He transacted the business of the ship with Mr Lewen junior, and considered him as the agent of his father:* He showed to Mr Lewen junior the resolutions of the Court of Directors, relative to this voyage of discovery, on the 26th of November; *but he did not know that these resolutions were made known to Mr Lewen senior.*

‘ Lord Chief Justice Kenyon thought, *That he must consider Mr Lewen junior as the person who had in fact the care and superintendence of the business of that ship, and he did not know how to sever his case from that of the other persons interested. If he did, he was afraid he should break down some of the very best rules of law. If he were to hold, that the acts of an active owner were not to bind the rest, he did not know to what consequence it might lead, he did not know how far it might carry him, he was sure he would be out of all soundings; he must consider Lewen the younger as the person adopted by the other part-owners*

‘ owners to manage their concerns in that ship as well as his own, and of course they must adopt his acts as their own. The Captain had stated, that he communicated the resolutions of the Company, relative to that dangerous voyage of discovery, to Mr Lewen the younger; and that no objections were made to them, though he had from November to March to consider of them. Plaintiffs non-suited.’

Here a simple communication to the clerk or agent of a ship's husband was held to bind the whole concern of the vessel, upon a presumed acquiescence in what had been communicated. It certainly requires no argument to shew, that Mr Dunlop, merely as an agent of the defenders, stood in a much higher situation with respect to the transaction in question, than Mr Lewen jun. did with respect to that transaction which was sustained by Lord Kenyon. But when your Lordships farther consider Mr Dunlop's situation, not only as a partner and director of the Greenock Banking Company, but as conducting their affairs for a series of years in Glasgow, and particularly their intercourse with the petitioners, and making payment to them weekly of immense sums of money by draughts, for which the defenders have judicially admitted they were answerable, it is thought the case of Lewen will appear narrow indeed, compared with the present. The petitioners feel some reluctance to trouble your Lordships with farther discussions upon a point which, they cannot help, in deference to the authorities that have been stated, esteeming so clear, as the powers of Mr Dunlop to bind the defenders by the transactions in question. At the same time the defenders have contended this matter with so much confidence, and brought it forward in so many shapes, and under such various colours, that the petitioners trust for your Lordships indulgence, while they avail themselves of the proof that has been taken, in order to examine their defences in their several branches, which, according to the statement in their information, are these:

- 1st, That Mr Dunlop had ‘ no powers to bind the Bank.’
- 2^{dly}, ‘ No intention to bind the Bank, nor any obligation of that kind granted.’ And,
- 3^{dly}, ‘ The pursuers claim barred by concealment, and other irregularities in the transaction.’

To make way for the *first* defence, the defenders have averred; Information, p. 3.
That in place of Mr Dunlop ‘ having more extensive powers than the

‘ the agents usually employed by banks, he in fact acted in a much more limited capacity than the agents which banks or banking companies are in use to appoint in different places.’

This is surely a most material consideration, and requires fully to be examined into ; for were the defenders averment true to the full extent, although it would not seem to liberate them, upon the principles of the two decisions that have been quoted, yet the pursuers are ready to admit, that it would have given them something of a plausible defence, and thrown some discredit upon the pursuers plea of *bona fides*. But, in the *first* place, The original, and indeed only communication which the pursuers had from the defenders, in what they call their company character, was in these terms :

‘ Scott-Moncrieff, Esq;

Greenock, 28th July 1785.

‘ S I R,

‘ Mess. Dunlop, Houston, Gammill, and Company, having opened a bank here, and appointed me their cashier, I have to inform you, *that Mr James Dunlop of Garnkirk will exchange with you regularly once a-week, what of the Company's notes may come into your hands ; and on your advising me what day of the week is most convenient for you to exchange notes, I shall give Mr Dunlop notice thereof.*—I am, Sir, your most obedient servant,

(Signed) JAMES MILLAR.’

Here then, is the only intimation given, by what the defenders call the Company, of the character and powers of Mr Dunlop ; and it must certainly be admitted to be as free of limitation or restriction as any thing of the kind that could be figured. It does not say that he was to act as agent, or in what way he was to settle and adjust the exchanges, but contains merely a general reference to Mr James Dunlop of Garnkirk, the first person in the firm of Dunlop, Houston, Gammill, and Company.

Aug. 1. 1785. The pursuers, Mess. Scott-Moncrieff and Dale, returned for answer, ‘ Mr James Millar, Sir, We duly received your favour of the 28th past ; and, agreeable to your proposal, we shall make a weekly exchange of notes *with your Company*, and give or take a bill on Edinburgh, at one day's date, as is our practice with the other banks here. If not attended with any inconvenience to you, we would propose to make the exchange on the Tuesday day

' day mornings at eight o'clock, when we settle with the other banks. *Of this you will be pleased to acquaint Mr Dunlop.*'

This, again, was the only letter ever written by the pursuers to the Company, or rather to their establishment at Greenock; and, taking it in connection with that from Millar, would, in sense and in language, imply, that henceforward the pursuers were to transact with Mr Dunlop, as being himself the Company, and entitled to bind it as an acting partner. Millar's letter says, '*Mr James Dunlop of Garnkirk will exchange with you;*' and the pursuer's answer, '*Agreeable to your proposal, we shall make a weekly exchange of notes with your Company,*' meaning with Mr Dunlop as representing it.

But there is no occasion for criticism or strict interpretation; it is enough that Mr Dunlop, the first and leading person in the firm of the Company, was introduced to the pursuers by this establishment at Greenock, without a hint of his powers being limited in conducting, in whatever way he judged best, this business of exchange.

Now, as there was no direct communication of this kind, it became necessary to enquire if any such could be inferred from the transactions Mr Dunlop conducted at Glasgow on behalf of the Company. The nature of these could only be legally established by an examination of Mr Dunlop's books, accounts, and correspondence, which it was no agreeable matter for the pursuers to enter into; and they therefore contented themselves, in the former pleadings, with stating in general terms, what was considered at Glasgow to be the nature of Mr Dunlop's management in this respect: But the defenders thought proper to dispute almost every thing that was advanced; and the pursuers had therefore no alternative but resorting to a proof, which might have been spared, had the defenders admitted the one half of what from thence is made out.

But to lay before the Court the whole of the evidence to establish the extent and multiplicity of Mr Dunlop's transactions on behalf of the Company, and the unbounded trust and confidence he possessed, and which these transactions announced to all the world, would be to cover the Bench with volumes. It is hoped it may be sufficient for the pursuers to show but a few specimens of these transactions, and of the correspondence regarding the Company's concerns, in order to refute the defenders averments regarding

garding a limited agency, and to satisfy your Lordships that the department he held more resembled a regular Banking establishment.

Proof, p. 10. D.

In the first place, He took up all the notes issued at the establishment at Greenock, that found their way into the several Banks at Glasgow. Was he limited then as to the disposal of these? No: he used them at pleasure, sometimes retaining the whole, as in the case of the Thursday's and Saturday's exchanges, without even advising the Greenock establishment how they stood; and on the Tuesday's exchange, when he was in use to advise, regularly retaining a considerable proportion of them, according to his own pleasure.

Appendix, No. 1.

— No. 2. & 3.

The amount of those taken up from the Royal Bank alone, was from L. 7000, L. 8000, to L. 9000 in the week, and these, independently of what he might receive up from the other *five* banking-companies in Glasgow.

And besides all these, it is proved from his books, that he had all the paper and credit that the establishment at Greenock could collect upon Glasgow remitted to him, which was often much greater than the other great receipts of the Company's notes.

Now, in what shape was he restrained with regard to the use and exercise of all this immense credit? There has not yet appeared any. It seems to have been entirely left to him to make the best of it for the good of the Company; and accordingly he appears, from his books, to have applied it in discounting bills for their behalf, answering the demands upon them at Glasgow, purchasing Edinburgh and London bills, and thereby supplying their account with Sir William Forbes and Company, who took up their notes, and answered the other demands upon them at Edinburgh.

This last seems indeed to have been by much the greatest field of Mr Dunlop's expenditure on account of the Company, as will be seen from a state of his remittances on this account, from the
— No. 4. 1st January 1792, to 20th March 1793, a period of about fifteen months, and during which they amount to the enormous sum of L. 222,421:10:6.

In all these immense transactions, then, Mr Dunlop must have appeared to the public as acting at discretion, and as the cashier and acting partner, at Glasgow, of a considerable banking-company. But was he in reality acting clandestinely by the rest of his Company, and adverse to their trust and permission? This can be best

best cleared up by attending to the manner in which the business at Greenock and at Glasgow was carried on amongst the partners themselves. Mr Gammill was the active partner at Greenock; but the ordinary and official part of the business was conducted by a clerk or cashier under his superintendence. Mr Dunlop again was the active partner at Glasgow; and in like manner, the ordinary business was conducted by a clerk under him.

It was in fact these clerks (no doubt under the direction of their respective masters) who carried on the whole public correspondence regarding the business between the two establishments. To show the nature and form of this correspondence, an example on each side may be given, only using letters of the alphabet in place of the names of individuals. Thus the clerk or cashier at Greenock writes:

James Dunlop, Esq;

Greenock, 21st January 1792.

S I R,

We have received your favour of to-day, accounting the two remaining packets of our notes from Edinburgh, and returning, with acceptance, the draught on A B sent you. It also handed A L's acceptance, with protest,

L. 276 1 6

W B with do.

75 1 6

To your credit,

L. 351 3 0

We inclose,

R S on G D,

L. 100 0 0

G D on B C,

59 17 0

J W's note,

56 0 0

R D on G W and Co.

20 0 0

To your debit,

L. 235 17 0

The box is returned as usual, with three packets of our notes, which please send us when convenient. We are, Sir, your most obedient humble servant, for

DUNLOP, HOUSTON, GAMMILL, & Co.

(Signed)

ROB. CALDWALL.

In

In answer to this, and another of the 23d, Mr Dunlop's clerk writes as follows:

Mess. D. H. G. & Co. *Glasgow, January 24. 1792.*

GENTLEMEN,

' I am favoured with your letters of 21st and 23d instant,
' handing in bills, &c. L. 1918 : 5 : 9 to your credit. I now
' hand, placing to your debit,
' Your notes retired herewith, L. 3492 11 11

' Kept, 500 0 0
L. 3992 11 11

' Paid J. L. - - - - - 30 0 0

' E. B. acceptance with protest, - - - - - 57 0 6

' G. W. - - - - - 46 12 0

' M. G. acceptance past due, - - - - - 18 0 4

L. 4143 13 11

' A. B's. acceptance, pr. L. 38, 15 s. is under protest.

' C. and D's acceptance is now paid. Your note-box has come
' safe to hand.

' Please return the inclosed two draughts with the needful, viz.

' G. and B. on S. D. - - - - - L. 37 4 2

' J. B. on R. I. - - - - - 175 3 1

L. 212 7 3

' I am, &c.

Proof, p. 10. F.
19. A.

This, agreeable to the depositions of Mr Dunlop, and Mr Auld his clerk, would be signed by the latter. Auld, upon his examination, exhibited 325 letters from Caldwell, from January 1792 to 18th March 1793, in similar terms with the one that has been quoted; and although he does not seem to have entered them in a letter-book, ' he swears that the deponent, in the character of Mr Dunlop's clerk, wrote and subscribed for him the whole correspondence to which the exhibits are answers.' In this way, then, does the general and ostensible business of the Company seem to have been carried on; but this was merely the mechanical

mechanical part; what required deliberation and arrangement, was the subject of private conference and correspondence, not indeed amongst the whole partners of the Company, but entirely between Mr Gammill at Greenock, and Mr Dunlop at Glasgow; and there does not appear to have ever been even an intention of consulting any of the other partners, excepting on two solitary occasions, one about purchasing into the funds, and another about an individual, a Mr Wright. Mr Dunlop, however, 'depones, Proof, p. 11. B. 'That he was frequently in use to correspond, by letters, with 'Mr Gammill, and in his absence, with the cashier of the Greenock-bank, respecting private matters.' And having, upon his deposition, promised to transmit to the commissioner who took the proof at Glasgow, such letters as he had in his possession from Mr Gammill or the cashier, from 1st January 1792, he accordingly did so; but owing to objections being made to their production by the defenders, they were transmitted under seal, to be disposed of by the Court. After some delay, however, it was agreed that these, with a number of other exhibits in a similar situation, (for inspection of almost every production was strenuously resisted), should be opened, and excerpts taken from them, at the sight of, and to be certified by Mr David Murray. This was accordingly done; and from these excerpts, although Exhibits, No. 9. they do not contain a twentieth part of the private correspondence for regulating the business of the Company, yet it is abundantly plain, that Mr Dunlop was as much a principal in the direction of its affairs as Mr Gammill himself was; and that in particular, he had the great and important charge, of finding a sufficiency of Edinburgh and London money to answer their credit with Sir William Forbes and Company, who transacted all their business at Edinburgh.

Thus Mr Gammill writes Mr Dunlop, 'This week the Bank Jan. 2. 1792. 'will require a remittance to be made to Sir William Forbes and 'Company, for more than will probably be convenient for you, as the 'Bank is in their debt L. 4049 exclusive of to-morrow's exchange, so 'that you will please to remit them to-morrow, and this week, as 'largely as you can.'

Some time after this, Mr Gammill seems to have gone to London; and then it distinctly appears that the establishments, both at Greenock and at Glasgow, devolved solely to his (Dunlop's) charge.

Caldwall, the clerk or cashier at Greenock, writes him thus:

E 'when

- Feb. 6. 1792. ' When the instructions I wrote out are signed, I will thank you
' for them. Whatever other directions may occur to you, will be at-
tended to particularly.' Again, of this date, ' I note what you
Feb. 10. — ' say respecting our remittances, which indeed have not been so
' respectable. I think, however, you may count upon their be-
' ing in future at least equal to your exchanges. But I suppose
' that, in the course of a fortnight, we shall have occasion to draw
' to Mr Wright for L. 10 or L. 11,000 at twenty days date, of
' which I shall advise you when we draw.'
- Mar. 26. — A variety of other communications of this kind, and requiring
Mr Dunlop's advice and directions, appear from the excerpts of
Caldwall's letters; but the following is decisive that he took no
step out of the general routine of the business, without first con-
sulting and having the sanction of Mr Dunlop.
' Yesterday I received a letter from A. B. covering his two drafts
' on London, at 90 and 100 days date, p. L. 1250, which I do
' not chuse to discount till I have your approbation, not knowing how
' these late speculations may have affected him. I therefore inclose a let-
' ter for him, returning the bills, which please send to him if you do not
' chuse them done; and I at the same time inclose another letter for
' Mr B. desiring him to apply to you for the proceeds of the bills to-mor-
' row, should you approve of their being done, which I am inclined to
' think you may, as all his drafts have hitherto been accepted.'
- Mar. 17. — Mr Gammill again writes Mr Dunlop from London: ' I was
' duly favoured with your letter, dated the 6th current, advising
' that you had been at Greenock, and found the Bank matters all right,
' which gave me pleasure.'
- April 9. — Upon his arrival at Greenock, Mr Gammill writes, ' I have
' not had time to look particularly into the bank-Business since my
' return; but I am sorry to observe a great decrease in our circula-
' tion since I went to London.'
- May 4. — Again, he writes: ' The Bank makes you all the remittances
' they can with conveniency; and they will remit you as fully as
' in their power, till the term is over.'
- May 7. — And of this date: ' You may rest assured that I shall continue to
' pay due attention to the interest of the Bank; and as I can ac-
' commodate the Bank with some Edinburgh money this week,
' you need not remit to Sir William Forbes and Company much
' more than L. 1000, till I advise you farther, as I wish to make
' your remittance at the term as moderate as possible.'
- Sept. 17. — In like manner, of this date: ' I am glad that you have a pro-
' spect

‘ spect of increasing our circulation. When I have the pleasure of seeing you, I shall inform you what it was the latter end of last month.’

Of this date, he writes: ‘ You have got all the remittances the Bank could make you since you came last home. They will send you three bills on Glasgow, each L. 500, due the 15th 18th current.’

Dec. 14. 1792.

Of this date: ‘ Please to write me this evening, so as to come here by to-morrow morning’s coach, what further directions I should give to Mess. Moffat and Company, with any other thing that occurs to you, so that I may write these gentlemen in course.’

Dec. 26. —

Of this date: ‘ It is surely a very difficult matter to fix the proper time for purchasing stock; but as you have the opportunity of conversing with many intelligent people upon that subject, and from your own experience and knowledge of that business, I think you are as well qualified to give an opinion as most people, and I shall be glad that you advise me, from time to time, what occurs to you upon that subject.’

Jan. 16. 1793.

And of this date: ‘ I think that we have settled matters, so as to exchange with the Edinburgh branch here (Greenock), and prevent them sending our notes to Edinburgh.’

Jan. 25. —

In short, taking the whole of the correspondence contained in these excerpts, it is impossible to form but one conclusion, viz. That while Mr Gammill conceived he was doing all he could for the interest of the Company at Greenock, so he trusted and implicitly relied that Mr Dunlop was conducting himself in the same manner at Glasgow; and except advising him as to the draughts upon Edinburgh, and the state of accounts with Sir William Forbes and Company, so as he might regulate his remittances accordingly, every thing else was left to his own discretion; and as to the rest of the Company, they never seem to have interfered in the smallest degree with either, and were, in the received sense of the word, sleeping partners. Mr James Macdowall, one of the partners, was deeply engaged in West India and other concerns, which wholly occupied his time; and the only other partner, Mr Houston of Jordanhill, chiefly resided upon his estate as a country gentleman, and neither of them interfered in, or knew any of the business of the Greenock Bank.

Now, in these circumstances, in what light could Mrs Dunlop exhibit herself at Glasgow? would it be in that of a limited agent,

as the defenders now say he was ? or would it not rather be as one taking upon himself the sole charge and direction of the Company's extensive transactions in that great city ? And as there appears to have been no check upon him privately, so neither could the public suspect any interference or negative over his management by any other person ; and were not the pursuers therefore well intitled to enter into any fair and reasonable arrangement with him, in the transactions that regarded the concerns of the Company ? If any thing short of a special written mandate was sufficient to have clothed him with power to this effect, Mr Dunlop possessed it ; and it is unnecessary to refer to the decisions that have been quoted, to show that no such mandate is required ; for it must be obvious, that if it were, the whole commercial machine would be unhinged.

Information, p. 17. The defenders spoke of Mr Dunlop's having undertaken the agency for the Company *on certain terms*.

These terms, however, they have not judged it fit to explain ; and it may be difficult for them to do so, unless they be simply, that it was for the general behoof of the concern, without fee or reward. The pursuers, indeed, in their petition, conjectured that the remuneration to Mr Dunlop for his management might arise from the use of the immense sums of money belonging to the Company, which he was from time to time possessed of. But this turns out to be a mistake ; for Mr Dunlop regularly debited himself and accounted to the Company for the full interest on all the sums in his hands that were not used on the Company's account ; and all that he appears, from his books, to have charged against them, from 5th July 1791, to 20th March 1793, is thus stated:

' 1792.

' July 3. To charges since 5th July 1791,

' Carriage of a note-box, from Whitsunday

' 1791 to Whitsunday 1792, -

L. 20 0 0

' Carriage and collection of bills payable in

' Paisley, from 5th July 1791 to this date, 6 17 8

' Postages, stationery, carriage of boxes, &c. 5 17 0

L. 32 14 8

' 1793.

' Mar. 20. To sundry small charges, collection of mo-

' ney at Paisley, &c. -

9 0 10

If

If therefore Mr Dunlop's powers were to be judged of by the extent of his salary or allowance for trouble, they would, for any thing that appears, be very limited indeed ; but when the magnitude of his transactions is considered, the defenders must either admit that he conducted the whole for the general good, and as they were thereby saved a great expence, so they must lay their account with sustaining any loss his management might occasion ; or perhaps he may have had an allowance at their private settlements, as an acting partner, alongst with Mr Gammill. This however would be equally destructive of their plea, and place him in a situation equal in power to the latter ; which, by the bye, amidst all their averments and contradictions of fact, they have never explicitly denied, or at least have not endeavoured to point out any distinction.

But although it may be difficult to draw a distinction between them, it is not so to make out one between Mr Dunlop, and what may be called a limited agent. The defenders, after Mr Dunlop's ^{Ans. to Condes. p.} failure, appointed a Mr Warrand, as their agent at Glasgow ; and they have said, that he ' exercises all the powers that Mr Dunlop ever did : ' and, when examined on the part of the defenders, he seemed abundantly willing to give an account of a sort of discretionary management he had assumed in conducting the Company's business, by running over the purchasing, selling, discounting, and receiving payments of bills, and indeed almost every other act that Mr Dunlop, or any other banker, could have performed, in order to make a complete business of it. But what do they all amount to, when the particulars are brought out ? Nothing else, it should seem, than displaying by contrast the difference between the transactions of Mr Dunlop, a partner acting under exuberant confidence, and the proceedings of an agent with limited powers.

In the *first* place, The notes he took up for the defenders on the weekly exchanges, do not bear a proportion to those taken up by Mr Dunlop, as a hundred does to a thousand.

Proof, p. 12 Exhibits by C. Gibson, No. 13. of process, Proof, p. 29. E.

But small as these were, he depones, ' That he *believes* he ' had instructions to send them to Greenock, as he received ' them upon the exchange at Glasgow.' Nevertheless, he says, ' That he has occasionally retained sums of money of the exchange ' notes, to be paid away upon the deponent's own account, and ' paid sums with them on account of the Bank, without having ' instructions or advice from the Company, or their cashier at ' Greenock.' And having afterwards exhibited an excerpt taken

— — F.

from his book of jottings, of the amount of the different exchanges made by him with the whole Banks in Glasgow, with the sums retained by him, he 'depones, That the sums appearing to be retained by the said excerpt were employed by the deponent, either for his own purposes, or for discounting bills, or otherwise distributing the Company's notes, as he judged for the interest of his constituents.' And except these, he swears, 'That he regularly transmitted to the Greenock Bank, the whole other notes received upon exchanges.'

Now, Mr Warrand was agent for the defenders from the month of April 1793; and this state is brought down to the 6th February 1795, occupying a period of near two years. And what do the notes he so retained 'for his own purposes, or for discounting bills, or otherwise distributing the Company's notes,' amount to during all that time? no more than L. 7198, 1s.

Exhibits by A.
Warrand, No. 7.
of process.

Mr Dunlop, it has been shown, was in use to retain from the exchanges with the Royal Bank alone, a sum equal to this *each week*.

Again, as to the bills he purchased on Edinburgh, all that his books could afford him evidence of, according to the excerpt he exhibited, amounted, during the above period, to only L. 1653, 14 s. 1 d.

Mr Dunlop, it is proved, was in use to purchase and remit bills to Sir William Forbes and Company, on account of the Greenock Company, to the extent, upon an average, of at least L. 3000 *in the week*.

Mr Warrand besides mentions to have discounted bills, but without mentioning to what amount; to have bought and sold London bills to some extent, but without giving any particular state of them. Taking the whole, however, as he would wish it to appear, it would be doing full credit to his transactions, to allow them to be equal in a year to Mr Dunlop's in one week. Nor can this be accounted for by a falling off in the banking business in general since Mr Dunlop's failure, which the defenders appeared to have been pointing at in the course of the proof. For, on the contrary, in transactions, such as those now in question, it appears that there had been no material defalcation. Mr Warrand was not allowed by the defenders to answer, whether he had a salary: And no wonder they resisted the question; for, if it had been answered in the affirmative, they would have found a sort

Proof, p. 14, H. &
p. 15, A. B.

— p. 29. E.

of necessity of accounting for Mr Dunlop's remuneration, in order to make any thing like a similarity between the two.

The pursuers shall now leave this branch of the defence, trusting that the fact upon which it has been endeavoured to be rested, of Mr Dunlop's limited powers, has in every circumstance been disproved.

It comes then, *secondly*, to be considered, Whether there was an intention to bind the Company in this transaction, and an obligation to this purpose in fact granted. The defenders, on this head, strive to show, that at least Mr Dunlop had no such intention; and if they wish to vilify their late partner, and hold him out to the world as guilty of gross and deliberate fraud, they may pursue the enquiry; but they ought first to reflect who contributed to place him in the situation to do so, and whether the consequences of it ought to attach to them, or to those who innocently, and *bona fide*, dealt with him. The pursuers apprehend, if they acted throughout with *bona fides*, it matters not to them what Mr Dunlop's intentions may have been; and indeed the defenders seem somewhat sensible of this, for they have imputed every species of blame that could be devised to the constitution of the agreement, so as to create a belief that the pursuers themselves could have no view to the Greenock Company being bound.

Thus, it was stated, and much insisted upon, that the pursuers had the temptation of its being apparently a profitable transaction; and, for the sake of this profit, they were disposed to run some risk, which, however, they considered to be exceedingly small, with a man of Mr Dunlop's fortune and credit; and while it was to be so profitable to the pursuers, it was to be a disreputable, as well as a losing expedient to the defenders, by borrowing money at 5 per cent. to take up their notes, which could not but impair their credit in the eyes of the world; and from all this they conclude, that Mr Scott-Moncrieff was no ways scrupulous about going into the measure, with a *chance* of having the Company bound.

It may be observed, however, that it is a presumption scarcely founded upon ordinary occurrences, that the officers of a great public Bank, acting merely for the general interest of their constituents, would, without any other motive, endeavour to take an unfair advantage of a private company for any pitiful profit, such as could be thought of in the present case, and,

A clear and uniform intention, that the whole defenders, as a Company, should be bound by the transaction.

— p. 14.

— p. 19.

Information, p. 24

and, in order to catch at it, they would depart from the most sacred rules of their constituents; for the defenders, in another part of their argument, not very consistently indeed, hold out, that by giving Mr Dunlop a cash-account, they departed from the rules of the Royal Bank, as well as all other Banks, who, in every such case, required a bond with cautioners. But however the presumption may stand upon the defenders representation of matters, it must certainly prove decidedly for the pursuers, when the facts are attended to. And as to the profit to arise from the accounts, it was explained by the letters from Mr Scott-Moncrieff, quoted in the former papers, and seemingly to the satisfaction of the Court: and it is now more fully and satisfactorily proved by the other letters from Mr Scott to Mr Simpson, excerpted by Mr Murray at the request of the defenders themselves, that the profit in question did not properly deserve that name; and that all that was thence to arise to the Royal Bank, was merely an indemnification from loss, which the circumstances urgently called for, and which therefore it was Mr Moncrieff's duty, in the conscientious discharge of his trust, to require.

Exhibits by Mr S
Anderson, No. 41.

And being thus merely calculated to avoid loss to the Bank, it could never be said to be either losing or disreputable to the Greenock Company, since what they were to suffer by it, if it was operated upon, was no more than to make up the loss themselves occasioned to the Bank; but they had it in their power to prevent either the one or the other, by always giving value for their notes upon the exchanges, in which case no entry would have appeared upon it. This clamour, however, about loss and disrepute, upon which so much stress has been laid, turns out to be at best mere affectation; for it appears, from the defenders accounts with Sir William Forbes and Company, that they not only submitted to the same loss and disrepute of paying 5 per cent. upon what was advanced in taking up their notes at Edinburgh, but paid a commission over and above, and besides were allowed 1 per cent. less when the balance was in their favour, than what they were to be paid by the agreement in question.

See Ans. to Con-
descendence.

Neither can they say that this account with Sir William Forbes and Company was always kept just about even; for it appears from the excerpt, which they called for themselves, and which would, no doubt, be for the most favourable period of the account, that the interest is considerably against them. But farther it is to be attended to, that the credit-side of this account with Sir William

William Forbes & Co. was chiefly filled up by the remittances of Mr Dunlop. Thus, from the 31st of March to the 30th June, the whole of the receipts amount to about L. 80,000, and within a trifle of L. 50,000 of this appears to have been remitted by Mr Dunlop. There is in no view, therefore, any ground for boasting that the Company took care to keep this account nearly equal unless it is meant that Mr Dunlop was the Company, for in fact it was he who truly and substantially did so; and the letter from Mr Gammill of the 2d January 1792, as well as a variety of others in the annexed appendix, both from him and the clerk or cashier at Greenock, distinctly prove, that they did not always consider that Mr Dunlop was possessed of sufficient tangible funds of the Company for this and their other purposes; speaking at the time, they admit that these might require a greater remittance than might be convenient for him; that the remittances from Greenock had not been so respectable; that they had remitted all in their power; and several such expressions, totally incompatible with the allegation now made, that they regularly impressed money into his hands to answer all emergencies.

Appendix, No. 4.

But not only were these circumstances totally misrepresented by the defenders, and misunderstood when the cause was advised upon the informations; but the defenders, in like manner, misrepresented another circumstance, equally material. For they stated, that 'if Mr Ramsay or Mr Simpson, after seeing Mr Dunlop's letter proposing to take a cash-account, did in fact express a wish, that the Greenock Bank should be kept bound; and if, as Mr Scott-Moncrieff says, Mr Simpson expressed his approbation of an account being opened with Mr Dunlop, as agent for the Greenock Banking-Company, for the exchange of their notes, in terms of Mr Dunlop's letter produced in process, keeping the Greenock Banking-Company bound by that transaction; *this would import, that they understood the letter itself not to be sufficient for that purpose, but that something more was to be done, which however never was done.*

Information, p. 30.

From this the defenders inferred, that Mr Scott-Moncrieff had patched up the agreement, without any regard to the instructions of Mr Ramsay and Mr Simpson, and without any view to the Company being bound: and unfortunately this had no small influence with your Lordships in pronouncing the interlocutor under review; as it seemed to be taken for granted, that the de-

Exhibits with Information, p. 12.

fenders statement of this matter was right; and that Mr Ramsay and Mr Simpson had written to Mr Scott Moncrieff, approving of the transaction, keeping the Company bound, *after* they had seen the letter of the 1st January; and some of your Lordships expressed a regret, that Mr Scott had not been more attentive to those instructions. But how does the matter really stand? Nothing, it is apprehended, can be clearer, than that this advice from Mr Ramsay and Mr Simpson must have been prior to the 1st January, and in fact between the 28th and 31st December. In Mr Scott's letter of the 28th, after explaining what was meant by the proposed transaction, the exact nature of which, it would appear, Mr Simpson had not then sufficiently understood, he adds, 'The account he means to be kept by us for J. Dunlop for Greenock Banking-Company: he said it would be a saving to us of L. 200 a-year interest, and not near so much loss to *him*; and he made no objection to-day, to taking up *his* notes three days in the week.'

And, in his letter of the 31st, after mentioning that he was to call on Mr Dunlop that evening, he adds, 'and doubt not will settle the matter with him.'

It is pretty plain, therefore, that by this time Mr Scott had got his instructions from Edinburgh, as he expresses no hesitation as to his being fully prepared.

Again, on the 1st January, he writes, 'I met with Mr Dunlop last night, and carried with me the scroll of a letter which I thought it would be necessary for him to write to us as the foundation of the proposed account, and that we might clearly understand each other: he approved of it, and brought me his letter this morning accordingly, with some trifling alterations. You have annexed an exact copy of it. I mean, if you approve of it, to make out another copy, and send it to him, saying, at the foot of it, that we agree to open the account, for the purpose, and upon the terms therein mentioned.' He then goes on to mention how he conceived, from the nature of the arrangement, there could be no doubt of the Company being bound, which must have been suggested by the previous instructions from Edinburgh, as, throughout the whole course of the former correspondence, not one hint of a doubt as to this can be discovered.

But

But further, the matter is put beyond all doubt from what subsequently took place. The defenders have recovered from Mr Dunlop the original draught of the letter proposed by Mr Scott-Moncrieff, with the one finally approved of, and a letter of the 3d January from Mr Scott to Mr Dunlop; in which last Mr Scott writes, *' Mr Simpson is satisfied with the letter, so I shall send you in the evening, a copy of it, with a declaration that we agree to open the account for the purposes therein mentioned; and I hope the business will now go on to our mutual satisfaction. Mr Simpson writes, that it is impossible they can depart from their general rule, of allowing only twenty days for London bills; as, if they did, their other friends would justly complain. I expected this, and the rather that I think they only allow twenty days for the bills on London they get in their exchange with the Bank of Scotland.'*

No. 4. 9. & 10. of Exhibits by J. Dunlop.

Of the same date, Mr Scott writes Mr Simpson, *' As you have no alteration to propose on Dunlop's letter, I have sent a copy of it, with two lines subjoined, that we agree to it; and so that ends that matter.'*

Exhibits with Inf. p. 15.

It is impossible, therefore, to peruse this correspondence, without being satisfied, that Mr Scott acted precisely agreeable to the advice and directions from Edinburgh; and that the transaction was deliberately settled, upon a thorough conviction of all parties (at least so far as the pursuers were concerned) that it was a Company business, and that they were bound by it.

The petitioners will now trouble your Lordships with the draught of the missive of agreement which Mr Scott prepared and delivered to Mr Dunlop on the 31st December, after receiving from Edinburgh a general approbation of the transaction, accompanied with a caution to keep the defenders bound. The draught is in these words: *' Gentlemen, In the management of the business of the Greenock Banking Company, and that I may be enabled to take up their notes from you in a manner more convenient for us both than hitherto, I shall be glad to open a cash account with you as cashiers of the Royal Bank here, to be kept in the name of James Dunlop for Greenock Banking Company; and I propose that my operations upon that account shall be as follows: I shall, three times in the week, viz. upon Tuesdays, Thursdays, and Saturdays, take up such of the notes of the Greenock Banking Company as may come into your hands,*

' by

' by giving an order on my account with you for the amount;
 ' and I shall make payments in to you upon said account on your
 ' receipts, in the manner most convenient for myself, either by
 ' the notes of other Banking Companies, bills on Edinburgh or
 ' London; it being understood that you are to take such bills
 ' from me upon the same terms that you do from others. The
 ' account shall be settled at least once in the year, or oftner if
 ' either party desire it; the interest to be then charged against me
 ' at 5 per cent. and you are to allow me 4 per cent on such sums as
 ' I may occasionally over-lodge with you. Until I see the effect
 ' of this arrangement, I cannot say exactly what extent of credit
 ' I may require upon this account, but it will always be in your
 ' power to limit it; and I shall at any time, upon three or four
 ' weeks warning, pay up such balance as may be due to you. It
 ' is further understood, that as this account is proposed to be
 ' opened for our mutual conveniency, it shall at all times be in
 ' the power of either of us to close it when we think that purpose
 ' is not answered by it.

' Form of Orders.

' L. Glasgow,
 ' Pay to the Bearer pounds, which place to the debit of
 ' my Account for Greenock Banking Company. J. D.'

Your Lordships will judge whether Mr Dunlop could, after receipt of such draught, entertain any doubt as to the nature of the petitioners intentions. He had hitherto paid the exchanges by Edinburgh paper, not exigible till the 5th day after, but for which the defenders were answerable, and for the expence of which the petitioners must have presumed that the defenders were charged; so that all the alteration visible to them from the new arrangement was, to lay the defenders under the necessity of paying instant value, at the exchanges, by paper only credited when as good as cash, in return for the notes instantly exigible then delivered to them. And that this might not be attended with any inconvenience to the defenders, they were intitled to lodge with the petitioners funds, and receive interest, if so lodged before the exchanges, or to have a short delay after the exchanges, if they chose to pay interest for it, instead of having to purchase at the moment Edinburgh money,

money, cost what it might. In describing what passed when the scroll was delivered to Mr Dunlop, Mr Scott, at the time, (1st January 1793,) writes Mr Simpson, 'I explained to him fully, that it was not meant to be a permanent advance, or any thing more than was necessary for taking up his notes and giving him a few days time to repay us.' This was the substance of the transaction, and by the form of it, it was to be by him, James Dunlop, for the Greenock Banking Company. It is submitted, with confidence, that both the form and the substance concurred to leave no doubt in Mr Dunlop's mind as to the intentions of the petitioners, and that if he had meant to make such an innovation as to change the liability in the payment of the differences, from the whole defenders to himself singly, he was bound to have communicated to the petitioners such intention, and the defenders also in a body were bound to have done so, as will be by and by observed more particularly. Instead, however, of any proceeding of the kind, he, on the next day, brought to Mr Scott the missive, which, after being approved of at Edinburgh, was accepted of by Mr Scott upon the 3d of January, and which Mr Scott considered, as appears from his letter of the 1st of January, as the same in substance with his own, and that the alterations on it were trifling. Mr Scott's words are natural; and it is impossible to suppose, that in writing Mr Simpson confidentially at the moment, there could be either disguise or misconception. He writes, 'I met with Mr Dunlop last night, and carried with me the scroll of a letter, which I thought it would be necessary for him to write to us, as the foundation of the proposed account, and that we might clearly understand each other. He approved of it, and brought me his letter this morning accordingly, with some trifling alterations. You have annexed an exact copy of it. I mean, if you approve of it, to make out another copy, and send it to him, saying at the foot of it, that we agree to open the account for the purpose and upon the terms therein mentioned.'

The defenders, before the scroll of the missive was recovered, were pleased to suppose that it might be very material to see the alterations, and it is not doubted that they will attempt to rest some argument on them. The petitioners will therefore here again insert the missive of agreement, printing in Italics the words chosen by Mr Dunlop and not in the original scroll, in order that your Lordships may judge, whether a person dealing *bona fide*,

as Mr Scott did, would not have felt with him in considering the alterations as trifling, and merely intended as improvements in accuracy or propriety of expression, and not in the least as variations in the substance of the transaction.

GENTLEMEN,

Glasgow, 1st January 1793.

As Agent for the Greenock Banking Company, and that their notes may be exchanged with you in a manner more convenient for both you and me than hitherto, I am very well pleased to open a cash-account with you, as cashiers of the Royal Bank here, to be kept in name of James Dunlop, agent for the Greenock Banking Company; and propose that my operations on that account shall be as follows: I shall three times in the week take up such of the notes of the Greenock Banking Company as may come into your hands, by giving you what Royal Bank notes I may have, and an order on my account with you for the balance; and I shall make payment on said account on your receipt, in the manner most convenient for myself, either by the notes of other banking-companies, bills on Edinburgh or London, it being understood that you are to take such bills from me upon the same terms you do from others. The account shall be settled once a-year, or oftener, if either party require it. The interest to be charged against me at 5 per cent. and you are to allow me 4 per cent. on such sums as I may occasionally over-lodge with you. Until I see the effects of this arrangement, I cannot say exactly what extent of credit I may require upon this account; but it will always be in your power to limit it; and I shall at any time, upon six weeks notice, pay up such balance as may be due to you. It is further understood, that as this account is proposed to be opened for our mutual conveniency, it shall at all times be in the power of either of us to close it when we shall think that purpose not answered. I am, &c.

(Signed) James Dunlop.

It may be judged, too, from the terms of the acceptance of the 3d of January, whether the petitioners did not believe that the alterations had been trifling, and that the Greenock Company remained truly bound.

SIR,

' S I R, *Bank-office, Glasgow, 3d January 1793.*

' The foregoing is a copy of your letter to us of 1st current; in
' consequence of which we agree to open and keep an account
' with you as agent for the Greenock Banking Company, upon the
' terms and for the purposes therein mentioned. And we are,
' &c.

SCOTT-MONCRIEFF & DALE.'

Mr Scott, in his letter to Mr Simpson of 1st January, in describing his conversation with Mr Dunlop, says, he objected to giving orders bearing to be for the Greenock Bank, as they would lead to a disclosure of the circumstance to the other Banks in Glasgow; and that, as the ground upon which the account was opened was clearly explained by him in his letter to be for the Greenock Banking Company, it was unnecessary for him to put that in every order. It is plainly impossible to figure a motive for Mr Scott writing this to Mr Simpson, if it was false; and if it be true, what becomes of the defenders labours to prove that it was not meant, or understood that the defenders should be bound by the new arrangement. Your Lordships will find some curious traits in the proof with respect to this notable defence. In the receipts given to Mr Dunlop for payments to the credit-side of the account, it had happened that two of them, viz. one of the 17th January, and another of the 27th of February, had been written by the accountant to the Bank, so that they were expressed with less brevity than by the ordinary clerks; by which means, instead of describing Mr Dunlop simply, with his title of *Esquire*, they design him, *Agent for the Greenock Bank*. And the defenders thought proper to examine Mr Auld, Mr Dunlop's clerk, about these two receipts, and whether he ever had any conversation with Mr Dunlop relative to them; and Mr Auld deponed, ' That, of the date of one or other of the two re-
' ceipts above mentioned, Mr Dunlop happened to see the said re-
' ceipt upon the desk in the counting-house, and inquired at the
' deponent, If the Royal Bank always drew the receipts in the
' same manner with that one? to which he answered, They did
' not; and he ordered the deponent to carry them a message, de-
' siring them not to do so again; and which message the depo-
' nent meant to have delivered to one or other of the tellers of the
' Bank next forenoon; but he was countermanded by Mr Dunlop
' that same evening, saying, as they had only done it once, it
was

Proof, p. 35.

A.

‘ was not worth while to take any notice of it. Depones, That
 ‘ neither Mr Dale nor Mr Moncrieff, nor any of the clerks nor
 ‘ accountants about the Royal Bank, had any conversation with
 ‘ the deponent about the said receipts.’ What Mr Dunlop’s
 cause of dissatisfaction might be at being described, in the re-
 ceipts given to him, in the precise terms in which he was
 described in the account to which these receipts related, is
 not explained by Mr Auld. The petitioners are willing to believe
 it was only an idea, that receipts in that form might chance to di-
 vulge the business to the other Glasgow Banks, and lead them to
 insist for a similar arrangement. But, at any rate, if Mr Dunlop
 had any different view, it is perfectly obvious that, on reconsi-
 deration, he thought it prudent not to express his dissatisfaction
 even to the tellers of the Bank, and therefore prohibited Mr Auld
 from taking any notice of the circumstance, so that nothing more
 was ever said about it. If then the defenders chuse to assert, that Mr
 Dunlop wished to contrive matters so that the account should only
 affect him as an individual, and not the defenders, they must also
 admit, that Mr Dunlop was so well aware that the petitioners un-
 derstood the business in a perfectly different light, as not to ven-
 ture to hint his wish, even to the clerks at the office, that the re-
 ceipts should describe him only generally, in the way that these
 gentlemen, from their usual love of brevity, had adopted at the
 commencement of the account. The petitioners will leave the de-
 fenders to make the most of this inference, to the credit of their
 partner, and the benefit of their cause.

The understanding of Mr Auld, too, may be concluded to
 have been to the same purpose with that of the petitioners, from
 a letter which the defenders recovered from him upon his exami-
 nation. Mr Gammill seems to have had a conversation with him
 in March 1794, no doubt wishing to fish out any circumstance that
 could favour the doctrine of the account being opened only for
 Mr Dunlop’s behoof; and Mr Auld, after great consideration,
 writes him, mentioning, in the *first* place, in what manner the
 exchanges made at Glasgow were advised, and then proceeds: ‘ I
 ‘ also recollect some words which passed between Mr Scott-Mon-
 ‘ crieff and me, and which, I believe, I did not formerly men-
 ‘ tion to you. Some time in the end of February or beginning
 ‘ of March 1793, when I called upon Mr Scott-Moncrieff to get
 ‘ a receipt signed, he expressed a wish that Mr Dunlop would re-
 ‘ duce

‘ duce the balance of *his* account from L. 8000 or L. 9000, which it was at that time, to L. 1000, L. 3000, or L. 4000, which he said was the sum understood between Mr Dunlop and him when they made the agreement. From this conversation, I think it clearly appears, that Mr Scott-Moncrieff at that time considered the account to be solely for Mr Dunlop’s *own* accommodation, and not for the Greenock Bank.

Here then is Mr Auld as anxious and desirous as any agent could be, to search for any one fact or circumstance that could please Mr Gammill, as a hold for imputing to Mr Scott a belief that it was a private account for Mr Dunlop’s own use, and after all he can bring nothing out but this solitary instance of Mr Scott calling it *his* account; a phrase, which it has been fully explained in the former papers, Mr Scott made use of when he referred to the Company, in the same way that he called their notes *his* (Mr Dunlop’s) notes. And Mr Gammill, too, seems to have adopted the same method of expression. ‘ I am pleased, that you have informed Mr Scott-Moncrieff that you are to exchange with *him* once a-week; and again, ‘ I am glad you have settled matters amicably with Mr Scott-Moncrieff.’ Can he say, that he here meant Mr Scott in his individual capacity, or was it not as representing the Royal Bank? Mr Auld’s understanding, therefore, previous to his recollection of this circumstance of Mr Scott having spoke of Mr Dunlop singly, may fairly be inferred to have been, that it was an account for the Company; and the conclusion he would wish to draw from this recent recollection, is evidently founded upon a misunderstanding of Mr Scott’s meaning, or perhaps an over anxious desire at the time, to communicate something that would be agreeable to Mr Gammill; for Mr Auld knew perfectly, that no one operation was made upon the account, except for the purpose of retiring the Company’s notes.

Letter, July 3.
1789.

Jan. 7. 1793.

But *2dly*, The defenders maintained, that, *de facto*, it was not an account kept solely for retiring the Company’s notes, and they adduced three instances to prove that it was not so.

1st, It was said, That in one of the articles of the debit-side, there are not only odd shillings, but odd pence, which showed that the payments could not be wholly in Greenock notes.

Information, p. 37.

2dly, That it appeared from Mr Dunlop’s accounts transmitted to Greenock, that the sums at the debit-side of the account exceeded the total of the notes exchanged with the Royal Bank on particular days, of which several instances were given. And,

I

3dly,

3dly, That a bill drawn by Mr Dunlop, of the 16th March, upon Sir William Forbes and Company, to the Royal Bank, for L. 2422, 6 s., did not appear at the credit-side of the account.

The account in question confined solely to the exchange of notes.

In bringing forward all and each of these circumstances, the defenders, or at least Mr Gammill, was most culpable; for he either did know, or might most easily have known, (and it will not be alledged, that he is much inclined to spare trouble in business that concerns himself), that they were totally destitute of foundation for affecting the purity of the account.

Proof, p. 8. G.

As to the 1st, It was mentioned at an early stage of the cause, that the odd shillings and pence arose from a negotiable bill or promissory note, which had issued from the office of Greenock, and come into the hands of the Royal Bank, and was delivered up to Mr Dunlop with the other notes upon the exchange. This, however, did not satisfy the defenders, who persisted in their assertion, as fatal to the account being confined to exchanges. But it happened during the proof to have occurred, that this same note would fall to be in the hands of Mr Gammill himself, as active manager at Greenock. Mr Gammill was therefore cited as a haver; and in this way it was immediately recovered, being upon his order transmitted from Greenock, and was found to correspond exactly with the odd money in the account. It will scarcely be controverted, that Mr Gammill had this document in his hands when he examined in course Mr Dunlop's account, or that there was not abundant opportunity for him to enquire into the fact; and that he was called upon to do so, after the explanation that had been given of it by the petitioners, instead of persisting to state the odd money as a point of evidence.

No. 6. of Auld's Exhibits.

2dly, With regard to the notes which Mr Dunlop advised as exchanged being less than what appeared on the debit-side of the account, it appears from the before-mentioned letter from Colin Auld, that Mr Gammill was fully apprised that Mr Dunlop had not given a regular return of the exchanges to Greenock; and if, after this, the defenders did not chuse to trust the pursuers account of them, they might, at one half the trouble they must have been at in fishing out the discrepancies from Dunlop's accounts transmitted to Greenock have satisfied themselves of its rectitude from looking at Mr Dunlop's books in the hands of his trustee at Glasgow; and this, it is thought, they were in fairness

ness bound to have done, before hazarding such assertions in a court of law.

3dly, As to the bill of 16th March upon Sir William Forbes and Company, it has been proved, that a sum of Greenock bank-Proof, p. 13. H. & Gibson's blotters. notes, equal to the value of that bill, was delivered to Mr Dunlop upon the exchange of that day. Now this particular day being known to the defenders to have been a regular exchange-day, and nothing appearing on the debit-side of the account in question, might they not naturally have concluded, that the bill would be given, as in fact it was, for the amount of the Company's notes received by Mr Dunlop on that day? and might they not, in various shapes, have satisfied themselves in this particular, or endeavour to do so, before urging it in Court? The petitioners would be sorry to charge deliberate and wilful misrepresentation against the defenders; but it scarcely can be doubted, that, from Mr Dunlop's accounts in Mr Gammill's possession, and which he appears sufficiently to have examined, this would have been fully explained, as, amongst the instances of the erroneous returns of the exchanges the defenders have condescended upon, this day's is not to be found.

And as to the rectitude of the whole of the account, in so far as nothing was placed to the debit of it, except the defenders notes delivered to Mr Dunlop, it has been proved, it may be said with wonderful accuracy, by the tellers in the Bank having fortunately preserved what they call their blotters or jottings of their transactions, as they happen at the time, and before being posted into any book in a formal manner. From these they made excerpts,App. No. 2. & 3; shewing,—those by William Penny,—the amount of the whole notes delivered Mr Dunlop,—those he paid in,—and the balances thence arising, which exactly correspond with the account. Charles Gibson's again, although no person can doubt of its being equally correct, is not so minute. It contains, on some occasions, only the balances of the Company's notes as placed to the account, and sometimes the amount merely *of all the notes* delivered to Mr Dunlop, which however always greatly exceeded what is put to the debit of the account. And on one occasion, the 10th January, the sum does not at all distinctly appear from his blotters, but only a sum of L. 1692, which he could not otherwise account for than being Greenock bank-notes; and it will be observed, that this comes within L. 8 of the sum put to the account on that day; and this trifling sum, it may be easily supposed, might come in of the

Proof, p. 13. H.

the Company's notes, and be delivered to Mr Dunlop's clerk before the balance was finally struck; as Gibson mentions that he often made the entries in his blotters before that took place, and after it did take place, did not always enter the balances, as in the cases which have been mentioned, where they rested upon the general amount of the Company's notes delivered to Mr Dunlop.

Proof. p. 7, 8, 9,
12, 13, 14, & 19.

— p. 36. A.

But taking these excerpts, joined to the depositions of Penway, Gibson, and Auld, and it is not supposed that even the defenders themselves will now attempt to dispute, that the account was wholly and exclusively operated upon in the retirement of the defenders notes. Indeed, so scrupulously nice in this respect, (and that Mr Dunlop should have no manner of transaction with the Royal Bank except in the Company-business), had he and Auld considered the cashiers to be, that it appears from Mr Auld's deposition, they were in use, when they wanted to purchase a bill on London from the petitioners, to get it done under a feigned name, to prevent any suspicion that it was for Mr Dunlop.

Driven therefore, as they certainly must be, from this other stronghold, of which the defenders made so much use in their former pleadings, they must now be reduced to the loose supposition, that, altho', in fact, the account was no wise abused, and remains pure, yet it *might* have been abused; as it appears from Mr Scott's letter to Mr Simpson of the 26th December, that he spoke of Mr Dunlop's giving orders upon the account for *large sums*, which, say they, implies that it was meant to be an indiscriminate cash-account. Now this expression, when taken with the context, is easily explained; one part of the grievance which Mr Scott complained of, was, the excessive trouble occasioned in the office of the tellers, by the rapid return of the Greenock notes, often on the very day they were taken up by Mr Dunlop; and this was occasioned by Mr Dunlop being obliged, as Mr Scott expresses it, to hunt about for Edinburgh and London bills to remit to Sir William Forbes and Company. These he often purchased from those who had their cash-accounts with the Royal Bank, and paying them with Greenock notes, they were immediately thrown into the Bank by the persons who sold the bills; and hence, without any profit to either party, there was a continual labour in counting these notes when they were delivered in, and the same day, or the day after, when they were delivered out to Mr Dunlop. Mr Scott's idea therefore was, and so he expressly mentions it in his letter to Mr Simpson of the 1st January, that when Mr Dunlop knew from the person he dealt

dealt with that his notes were to be immediately thrown into the Bank, he might, rather than occasion this useless trouble, give an order upon the account; and it is perfectly plain, that the thing was in itself fair, and reasonable to all parties, for it could in no shape affect the circulation of the Company's notes, so far as the circulation was to be attended with any advantage; and indeed the thing is practised by Warrand, who now acts for the defenders at Glasgow, who, after speaking of having purchased and discounted bills for them, swears, 'That he paid for these bills partly in Greenock notes, *when he considered they were to go in circulation, and by far the greatest part in notes of other banks, to prevent Greenock notes being paid into other banks.*' Mr Scott therefore, speaking of an arrangement with Mr Dunlop as the representative of the Greenock Company, was here proposing nothing but what was just and fair towards them in the conduct of their business, and he could not dream, holding as he did Mr Dunlop in fact to be the Company, that it could give rise to abuse, or imposition of any kind. It will be observed however, that this was merely a loose notion thrown out by Mr Scott to Mr Simpson, when the outlines of the arrangement were but first hinted, and before they were any wise digested; and it will be judged, whether there can be any ground for complaint on this head, when it is seen, that the terms of the agreement, as finally settled, demonstrate that the account was to be opened and used for the sole purpose of a more fair and equitable mode of exchange of the notes of the respective Companies, and for no other purpose, and that it is now proved beyond the possibility of doubt, that the whole transactions upon this account were strictly confined to the purposes for which it had been opened.

No one circumstance then that the defenders have brought forward, when examined into, can be found in the smallest degree to affect the *bona fides* of the pursuers, in holding that they entered into this arrangement as a Company transaction; but, on the contrary, all and each of them go to shew that they believed, and firmly trusted, that the Company's security was pledged in it.

But even allowing this to be the case, the defenders further contend, that there are not words in the agreement sufficient to bind them. If, however, the meaning and intention on the part of the pursuers appears to be pure and honest, it is not imagined that, in a commercial matter of this kind, the defenders would be allowed to shake themselves loose, from a deficiency in the words or

The missives of agreement at least equally binding with any of the other papers issued by the defenders.

mode of expression in the missives of agreement. But it may be unnecessary to argue upon this, and show how favourable the law is to any writing in commercial matters that will convey the meaning of parties: for the pursuers apprehend, that the defenders are as much bound by the express terms and words of the agreement, as they are apparently by any one of their notes or bills issued from the office at Greenock. The agreement bears, 'as agent for the Greenock Banking Company. And that their notes may be exchanged with you in a manner more convenient for both you and me than hitherto, I am very well pleased to open a cash-account with you as cashiers of the Royal Bank, to be kept in name of James Dunlop agent for the Greenock Banking Company, and propose that my operations on that account shall be as follows.' Then go on the particulars as to the exchanging the notes and paying the differences.

Now, keeping in view the species of agency that Mr Dunlop had all along performed on behalf of the Company, which has been shewn to amount to a management at discretion, let us consider if the notes and bills issued at Greenock bear stronger terms for binding the Company. Their notes then in circulation were in this form: 'I promise to pay to Ja. Smellie, or bearer, on demand, One pound one shilling Sterling, at the Company's banking-office here. For Dunlop, Houston, Gammill, and Company,

ROBERT CALDWALL, *Cashier.*'

And a form since adopted by the Company, is in these terms:

'I promise to pay to J. Smellie, or the bearer, on demand, One pound one shilling Sterling, at the Company's office here.

For the Greenock Banking Company,

ROBERT CALDWALL, *Cashier.*'

The terms of the promissory notes, as appears from the one that was recovered out of Mr Gammill's hands, to account for the odd money, are exactly similar to those of the first note; and all the Company's paper, therefore, which imposed any obligation upon them, is liable to the same objection as this agreement, namely, that it does not, in direct and express words, bind the Company, but only the person acting for them; for all the difference is, that in the former, it is a servant or clerk who imposes the obligation upon himself for the Company, adding *Cashier* after his name, and in the latter, it is one of the partners, managing exclusively an

an extensive branch of their business, who imposes it, putting *Agent* before his name. To ask any indifferent person, whether he would reckon himself most secure with the one obligation or the other, it is humbly thought he would prefer the last: for it would naturally occur, that an active partner's powers, in whatever way he was styled, provided it was in a Company transaction, falling in with the course of his management, were to be understood and implied as inherent; whereas the powers of any clerk or third person employed by the Company, in whatever way he chused to style himself, would altogether depend upon what was delegated to him by the Company. Those of a cashier are various. It has been seen, that the one who acts for the defenders, could not, in Mr Gammill's absence from Greenock, discount a bill without writing to Glasgow for Mr Dunlop's approbation. Those of the pursuers, again, are more extensive; and had there been a balance on the other side of the account in question, can there be a doubt that the defenders would have claimed it? and when they did so, how would they have looked if the Governor and Directors of the Royal Bank had refused payment, and alledged that the money had been misapplied by their cashiers, and they had no powers to bind them? and that there was no communication made to them by the defenders regarding the transaction? There is no question that the defenders would have frowned at such a resistance, and held it as a downright absurdity, and tearing up by the root that good faith and confidence, without which the commerce of money in this country would stop. Yet it seems to be so much of a piece with their own plea, that if any difference exists, it would seem to bear more favourably to the side of the one supposed.

Leaving, then, the second defence, the pursuers shall proceed to consider the last, founded upon concealment and irregularity; and this has many ramifications.

But before going into particulars, it may be proper to enquire, what authority there was for the defenders asserting, in general terms, that the transaction was *studiously* and *intentionally* concealed from the office at Greenock. It has been mentioned, that from the 1785 downwards, the pursuers had no sort of direct communication with that establishment, which consisted of Mr Gammill, and his clerk or cashier; but that the whole of the business was transacted with Mr Dunlop, the other active partner, and manager of the establishment at Glasgow; and that when trans-

No species of concealment or irregularity imputable to the transactions.

acting

acting with him, the pursuers believed they were transacting with the Company. Did they, however, believe or suspect that Mr Dunlop did not communicate with Mr Gammill upon the business? If this appeared, then, no doubt, the defenders might have said the pursuers were culpable in not informing him, as he was known to be an active partner. But how does the fact stand? A material alteration took place in the management of this business of exchange of notes in 1789; and the coincidence of circumstances in point of communication amongst the parties, in the course of that arrangement and the one now in question, is striking and remarkable, and proves to conviction the sense and understanding of Mr Scott-Moncrieff, that Mr Gammill was as much consulted in the one as in the other.

Exhibits with Information, p. 8. D.

In 1789 Mr Scott writes to Mr Simpson: 'Just now Mr Dunlop has been with me, and brought with him his friend Gammill. I just read to them what you write on their business. They seem to admit the force of what you say, and expressed very strongly their desire to be on the best footing with us; but they earnestly beg that you will let them go on two or three weeks, exchanging here only once a-week, until they see the effect of the present measures, and of this new Paisley Bank branch at Greenock; and they promise some time in June to come to a final arrangement, which they had no doubt would be to your entire satisfaction.'

— — H. And on the 1st July Mr Scott again writes: 'By the by, James Dunlop called, to say Gammill would exchange twice a-week with us here.'

Here then the arrangement of 1789 rested, upon a conversation with Mr Dunlop and Mr Gammill, whom he accidentally introduced to Mr Scott, and upon a verbal communication by Mr Dunlop alone, that the measure was agreed to. There was here no formal communication with the Company, yet they admit they were bound by this transaction.

Appendix, No. 5.

It appears from Mr Scott's letters to Mr Simpson, that so far back as January 1792, he had begun to remonstrate with respect to the injustice which the Royal Bank suffered in the exchange of the notes, and explains the two evils they suffered, the loss of interest, and the consumption of the time of the clerks. On 18th August 1792 Mr Scott writes: 'The very notes we gave them up in the morning, Mr Dunlop contrives, by his transactions with some of his customers, to have back to us again before three o'clock.'

On

On the 21st of the same month he writes: 'I must have a conversation with James Dunlop when I get to the cross; and if he does not alter his plans, we will send you his notes by every private opportunity.' On the 23d he writes: 'I spoke to James Dunlop yesterday, but could make nothing of him. He said he could not blame us for sending in his notes to Edinburgh, but that it would be no advantage to us to do so. *He promised, however, to speak to Gammill when he came to town.*' And on the 28th September he writes, 'Mr Gammill called on me this morning, to ask demands for Edinburgh. *I remonstrated with him about the Greenock notes; but he says he leaves that wholly to Mr Dunlop, who says he leaves it wholly to Mr Gammill; and so they shift us.* I bid him call on you, but he said he needed not.'

On the 26th December Mr Scott writes: 'I have just now met with James Dunlop; told him both you and we were most averse to take any strong measures, but that it was impossible we could go on as at present, and it was most unworthy of a bank of any respectability to take such advantages. *He said he left all to Mr Gammill: Said I, I have spoke to Mr Gammill, and he leaves all to you.*' That Mr Scott had spoke to Mr Gammill on the subject, and that Mr Dunlop was to be consulted for giving the redress, is admitted by Mr Gammill in his answer to the queries put to him before the Lord Ordinary, although qualified with an absurd legal plea, regarding the subsistence and validity of the original agreement for regulating the exchanges, which he knew to have been already departed from in 1789.

Exhibits with Information, p. 5.

Again, Mr Scott writes Mr Simpson: 'In reflecting on the proposed arrangement with James Dunlop, I imagine, *after he consults Gammill, although he may agree to open an account with us,* he will insist on our debiting him with the amount of *his* notes only twice a-week, which he will tell me is as often as the other banks exchange; and I want to be prepared for him, in case he should make this proposal. The exchange with the other banks ought to be no rule to him, as they gave us up our notes, and have often an equal sum to what we have of theirs; whereas he never has any, or but a trifling sum of our notes to give us: and on thinking farther on the matter, I see we have another and a better way of compelling *him* to do us justice than by refusing *his* notes. As we go on at present we are constantly in advance for *him* L. 3000 to L. 4000. Last Tuesday we had L. 8000 of *his* bills running on Edinburgh; thus there is a loss to the Bank.

— p. 30. H.

— p. 11. A.

L

' of

‘ of at least from L. 130 to L. 200 a-year interest.’ He then goes on to suggest a method for redress, by sending the notes to the office at Greenock, where they were payable, and demanding a bill at sight on Edinburgh for them.

This being the nature of the correspondence previous to the agreement, it seems to have been scarcely decent in the defenders to assert in the face of it, that there was an intentional concealment on the part of the pursuers, and that the account was meant as a private one for Mr Dunlop as an individual. Was it not equally fair and open as that of 1789? Was not Mr Gammill spoke to, and then Mr Dunlop; and again time given to him, with a view to his further consulting Mr Gammill? All this Mr Scott’s letters, written at the time, and confidentially to Mr Simpson, fully speak out. And if Mr Gammill was spoke to, and again to be consulted by Mr Dunlop, is it not sporting with common sense to maintain, that the whole was only meant as a private accommodation for Dunlop personally?

It seems scarcely necessary therefore to notice, that the pursuers offered to prove, by a person who was present, that the consulting of Mr Gammill was a matter of conversation between Mr Scott and Mr Dunlop in a public coffee-room, previous to the arrangement taking place. The defenders indeed, though they expressed a high regard for the character of the witness, and could not therefore doubt his credibility, yet were successful in getting his testimony rejected, upon an objection that he was a proprietor of

Proof, p. 6, F. G. Royal Bank stock.

But further, while the above correspondence was going on between Mr Scott-Moncrieff and Mr Simpson, what was the nature of that between Mr Dunlop and Mr Gammill in regard to these two transactions, the first of which is admitted to be good, and the other reprobated?

Exhibits with Information, p. 6.
July 2, 1789.

As to the *first*.

Mr Dunlop writes Mr Gammill, of this date: ‘ I have settled with the Royal Bank, that we shall exchange with them every Saturday morning; which I expect to manage so that it shall make no alteration in the operations of the Greenock Bank, but shall come all under the Tuesday’s exchange with me. On considering the matter, *I thought it better to make the communication to Mr Scott by word of mouth than by letter, WHICH KEEPS US PERFECTLY OPEN, in case of any future change in their arrangement.*’

Mr

Mr Gammill answers :

‘ I am favoured with your letter of yesterday’s date, with the inclosure, which is perfectly satisfactory. I am PLEASED that you have informed Mr Scott-Moncrieff that you are to exchange with him twice a-week; and the mode you propose I think will be attended with no loss to the Bank. At same time, it pleases them.’

July 3. 1789.

Now, as to the transaction in question.

Mr Dunlop writes Mr Gammill, of this date: ‘ The Royal Bank have been complaining very much of late, and perhaps with some reason, of the number of our notes that were thrown in upon them, especially on the Saturdays; and two or three days ago, Mr Scott-Moncrieff called, and told me that he had orders from the Directors at Edinburgh either to refuse our notes altogether, or to send them to Greenock on purpose every day, which he said would be much cheaper to them than the way they are at present, which indeed I believe may be true. I said, If such measures as these were resorted to, I believed we could procure as many of their notes as they could do of ours. He said however that might be, he had directions to make the experiment. At the same time, he would be extremely sorry to take a step of that kind, if any could be fallen upon to prevent it. I told him, I could think of none; for I would by no means advise the Greenock Bank to alter the mode of making their exchanges, which had been settled by mutual agreement. At the same time, as the management of these exchanges had been left entirely to me, if he could think of any way in which I, as agent, could accommodate them, I should have no objection to try it. After several conversations, he at last made a proposal, which I told him I would make trial of, with which he seemed very well satisfied; and, in my opinion, it will make so very little difference, if any to me, that I can continue to settle the exchanges with the Bank as formerly; AND I AGREED THE MORE READILY, AS I THINK IT WILL PREVENT A GREAT NUMBER OF OUR NOTES FROM GOING TO EDINBURGH, THE PROCURING OF EDINBURGH MONEY TO REPLACE WHICH, HAS BEEN ATTENDED, NOT ONLY WITH EXPENCE TO THE BANK, BUT LATELY VERY GREAT TROUBLE TO ME AND NO DOUBT IT HAS ALSO BEEN TROUBLESOME TO SIR WILLIAM FORBES AND COMPANY.’

Exhibits with Information, p. 21.
Jan. 5. 1793.

Mr Gammill answers to this :

‘ I am GLAD you have settled matters amicably with Mr Scott-Moncrieff

Jan. 7. —

‘*crieff, and that upon such a plan as will prevent our notes from going to Edinburgh, which was troublesome to all parties concerned.*’

Now, let this be compared with Mr Gammill’s former letter, approving of the arrangement in 1789, and where is the difference? It lies here: In the former, Mr Gammill approved, or, as he expresses it, was *pleased*, because Mr Dunlop said it would prove no loss to the Company, as he would bring all under the Tuesday’s exchanges, in his accounts with them. In the latter, he approved, or, as he expresses it, was *glad*, because not only was there to be no loss to the Company, since Mr Dunlop, (whose credit Mr Gammill then no doubt fully relied on), said he would continue to state the exchanges in his accounts with them in the same way as formerly; but they were moreover to be *prosters*, by preventing their notes from going to Edinburgh, which had occasioned them expence, in purchasing Edinburgh money to meet them there.

Defenders Information, p. 33.

The Lord Ordinary, before whom this cause originally came, and who is now no more, expressed an opinion in favour of the pursuers claim upon this letter alone, and would have pronounced a judgement accordingly, but thought it might be more advantageous to both parties in point of dispatch to take it to report; and accordingly the defenders, in their information, laboured hard to explain and do away the effect of it. It was said, that the letter from Mr Dunlop showed, ‘*1st, That during all the communings between Mr Dunlop and Mr Scott-Moncrieff, and at the time when the missives were exchanged, no communication was made to the defenders of what was going on; 2^{dly}, That they were not informed afterwards of the nature of that transaction, or that there was any transaction at all in which they were concerned; and 3^{dly}, That in place of being informed by Mr Dunlop of any alteration to affect them, they were assured by Mr Dunlop, that he had told Mr Scott-Moncrieff that he would by no means advise the Greenock Bank to alter the mode of making their exchanges, which had been settled by mutual agreement.*’

Now, as to the *first* of these observations, it has been shown that it is not founded in fact, at least if it is meant by the *defenders*, their only other active partner Mr Gammill; for he was obliged to admit judicially, that Mr Scott had communicated to him the subject upon which the arrangement followed; and he expressly mentioned, that Mr Dunlop was to be spoke to.

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As to the *second*, The above letter from Mr Dunlop to Mr Gammill shews that Mr Gammill was informed that an arrangement had taken place, and that upon the very business which had been the subject of conversation between him and Mr Scott-Moncrieff. How then can it be said, that the Company did not appear to be concerned? Were the complaints made by Mr Scott to Mr Gammill, which gave rise to the transaction, and the communication by Mr Dunlop to Mr Gammill, that it was settled, of any sense or meaning, unless the Company was concerned? But farther, Mr Dunlop's letter expressly mentions, that profit was thence to arise to the Company, by saving them the expence of purchasing Edinburgh money. Was this a matter of indifference to the Company? Mr Gammill's answer indeed does not openly go upon the idea of this profit, although upon the cause which was to effect it, namely the preventing of the Company's notes going to Edinburgh; and, in place of profit, he is pleased to say, it would save trouble to all parties; but was even the saving of trouble to the Company and their correspondents a matter in which they were not concerned? The letters from Mr Gammill to Mr Dunlop, regarding the exchanges at Edinburgh, and supplying Sir William Forbes and Company with money on that account, shew of what essential consequence it was to the Company to prevent their notes going to Edinburgh.

Exhibits, No. 5.

And as to the *third* observation, It no doubt appears that Mr Dunlop was not just so candid as he might have been in speaking of not departing from what had been settled by mutual agreement, (which may have suggested the same plea to Mr Gammill in his judicial answers); and it was observed from the Bench at the advising, That it was an artful letter, calculated to deceive. But although it might have been so to one not acquainted with the previous circumstances, it ought not to have had this effect with Mr Gammill. He knew that the alledged agreement had been departed from in 1789, and he was possessed of Mr Dunlop's letter on that occasion, telling him, 'I thought it better to make the communication to Mr Scott by word of mouth than by letter, *which keeps us perfectly open, in case of any future change in their arrangements.*' The only way therefore of holding that Mr Gammill had any faith in what Mr Dunlop said as to the mutual agreement, is by supposing that he considered the Royal Bank to be

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bound, and his Company free and open ; but this surely is a language which he will not be permitted to hold.

Information, p. 33. Mr Gammill, however, farther says, that the idea which struck him, upon perusing Mr Dunlop's letter of the 5th January, was ' that Mr Scott-Moncrieff, knowing that Mr Dunlop was engaged in a variety of extensive business, with which the Greenock Bank had no concern whatever, had proposed to him to discount some of his private bills at their office.' Mr Gammill certainly deserves credit for this idea ; for surely it would have struck no mortal but himself, that a letter which contains nothing but a communication regarding an arrangement in the exchange of the Company's notes, which was to save them expence and trouble, should be construed to have relation to the discount of Mr Dunlop's private bills ; not to mention, that Mr Dunlop's *other* extensive business has not been explained, and it has been proved that the pursuers had no other transaction with him whatever, but as representative of the Greenock Company.

In short, every attempt that has been made by Mr Gammill to explain, has only involved contradiction and absurdity ; and the more it is attempted, the broader and more forcible his letter of approbation appears. Indeed it seems impossible attentively to consider this letter, and not to be satisfied that it is alone decisive of the cause. Were not the defenders bound, if they did not chuse to rely blindly upon the discretion of their partner and agent, to have learned the particulars of the arrangement, either from him or from the petitioners ; and either signified approbation or disapprobation, according to the opinion they then formed ? But if they placed that trust in Mr Dunlop, as either to approve explicitly, or silently to acquiesce without enquiry, is it possible to doubt that they must be bound to the petitioners ? The defenders surely could not be at liberty, after such an intimation, to sit with their hands across, and leave the petitioners to go on, believing they were transacting business with them through the medium of their agent, while the defenders were intending to lie by, and, as Mr Dunlop expressed it with respect to their former arrangement, ' keep themselves perfectly open,' while the petitioners were bound. Such a plan can never be indulged to the defenders ; and if notice to Mr Gammill was the best of all notices to them, it seems impossible for ingenuity itself to find out a solid plea for evading the effect of this communication, followed as it immediately was by Mr Gammill's unlimited approbation ;

bation ; for the only thing that it seems possible for them to say, is, that this was a private approbation to Mr Dunlop only, and as it was not communicated to the petitioners, they could not rely upon it. But this your Lordships, as a court of law and of justice, would not listen to. If Mr Gammill had enquired farther, and reprobated the transaction even to Mr Dunlop, you will presume that he would have acted as any other honest man would have done in such a case, by coming to the petitioners, and saying, that as his partner disapproved of the measure, it must be at an end ; and thus the petitioners would have been left at liberty to seek redress of the grievances they had complained of as they best could. Accordingly an Honourable Judge, at the advising, gave a decided opinion that Mr Gammill himself was personally liable upon this letter of approbation, although his Lordship was for assailing the rest of the Company. But from the way in which their business has been proved to have been managed, it must now be plain, that if Mr Dunlop and Mr Gammill were not the efficient Company, there was no Company at all ; and with their sanction to this transaction, therefore, the pursuers must be intitled to recover from the whole partners, leaving the question amongst themselves, whether one of their active partners approving implicitly, but blindly, as he says, of the transactions of the other active partners, ought not alone to bear the loss thence resulting.

But, say the defenders, you Mr Scott-Moncreiff ought to have wrote officially to Greenock that the transaction was closed. Now, it has been shown who were at Greenock to be wrote to, to wit, Mr Gammill, and his clerk or cashier. Mr Scott had had a few lines from one James Miller, who acted in the latter capacity ; but this was seven years ago ; and it appeared from their paper in circulation, that a Mr Caldwell acted in his place. Now, suppose Mr Scott had wrote to their cashier, Mr Caldwell, giving him an account of the transaction, and that Mr Gammill had happened to be from home, as he was in spring 1792, What then would have happened ? Is it not evident from Caldwell's letters at that period, that he would just have forwarded Mr Scott's letter to Mr Dunlop at Glasgow ? And might not Mr Dunlop reasonably have held this language to Mr Scott ? ' I find you have taken the trouble to write to Greenock regarding our arrangement. This surely might have been spared ; and it appears to me as only to be accounted for from officiousness, or that you suspect my integrity, as otherwise you could not doubt but I would myself communicate

‘ communicate the business to my copartners. This is unlike that liberality that it might be supposed would exist with the officers of a great public Bank, towards the active partner of a respectable Company.’ It does not seem to be clear what satisfactory answer Mr Scott could have made to this address; and far less could he have excused himself, if he had wrote Mr Gammill after his having previously told Mr Dunlop, ‘ I have spoke to Mr Gammill, and he leaves all to you.’

This may likewise meet another observation, that Mr Scott might have spoke to Mr Macdowall, who lives at Glasgow, and a partner of the Company, although his name does not appear in the firm. But this would have been still more ridiculous; for Mr Macdowall, if he did not laugh at him, would certainly have looked upon it as rather an impertinent sort of intrusion, and answered, ‘ That as Mr Scott had never seen him take any charge or concern in the Company business, he could not reasonably think that he would either understand or interfere in the transaction; and he might therefore go to Mr Dunlop or Mr Gammill, whom he might have observed conducted all the business of the Company;’ just in the same way as a proprietor of the Royal Bank would have referred Mr Gammill to Mr Scott or to Mr Dale, if he had accosted them upon the subject.

So far from any concealment, the transaction appears now to have been matter of conversation with Mr Gammill, during the currency of the account.

But the pursuers may now go a step farther, and show, that Mr Gammill did in fact know of the account in question during its currency. The evidence, no doubt, rests upon Mr Scott’s recollection, and a private confidential communication of it to Mr Simpson. This species of correspondence, although most favourable to their cause, the pursuers were most unwilling to submit to public inspection; but as insinuations had been thrown out by the defenders, that Mr Scott had destroyed Mr Simpson’s confidential communications, with a view to exclude the light from the matter now at issue, it was suggested in the petition and condescendence for the pursuers, that some of your Lordships, or the principal clerks of Court, should examine those from Mr Scott to Mr Simpson, remaining in the latter’s possession, and report, whether the pursuers had not stated the fact justly, in saying that the corresponding communications to Mr Scott-Moncrieff must necessarily have contained a variety of matter of the most private and delicate nature, and which it might have been of very dangerous consequence

sequence to third parties to be disclosed ; and that it was, therefore, prudent on the part of Mr Scott, to destroy them after perusal.

But the defenders were not satisfied ; and although they made no such motion in their answers to the condescendence, so as it might appear upon the face of the record ; yet, when the condescendence and answers came to be advised by the Court, they insisted from the bar, that not only the whole of this confidential correspondence, from the beginning of the year 1792, should be submitted to inspection, and the contents, so far as referable to the defenders, reported to the Court, but also, that the same thing should be done as to a letter written after Mr Dunlop's failure. The pursuers certainly stated, that they conceived this to be both an irregular and singular demand ; there was nothing on record to show how it came ; and a general inspection of all the pursuer's private confidential correspondence, without any condescendence of what was meant from thence to be proved, seemed to be a novelty in judicial procedure ; and more especially with regard to the letter written after Dunlop's failure, which was a demand, the defenders own counsel had at one time given up, as contrary to the law of evidence ; and it had been so found, by a final interlocutor of the Lord Ordinary. Notwithstanding this, however, the Court, moved by the loud complaints and insinuations of undue conduct, thrown out against the pursuers, were pleased to indulge the defenders to the full extent of their demand, and appointed Mr David Murray to examine and report upon the whole correspondence. The pursuers acquiesced in this : and although they have had the mortification of submitting to inspection a series of correspondence, which was never meant for any eye but the persons in whose hands they were, yet they have, at the same time, the satisfaction to think, that, except what has been reported, this correspondence will remain sacred with the person whom the Court appointed to examine it ; and that what has been so reported must put the defenders to silence in future in their abusive insinuations against the conduct of the pursuers ; and exhibit, on their part, a *bona fides* throughout the whole business, which these insinuations had impressed your Lordships with much doubt of ; while, at the same time, it may show, that the same insinuations could be fairly retorted, and that the same *bona fides* will not apply to the defenders, at least to Mr Gammill, their other active manager. What then appears particularly from this correspondence ?

Excerpts by D.
Murray, No. 4.
P. 2.

1st, As to Mr Scott's destroying Mr Simpson's letters, or private notes, which they are proved to have been, what does Mr Scott say concerning them, in his to Mr Simpson, long before the transaction in question took place? He writes thus, on the 25th February 1792. 'And as for your p——s (or privates), they are all destroyed as soon as answered:—The same I expect and require of you as to my p——s. Were you to die, and leave them in your desk, they would afford entertainment to your executors, (if they could read them), which I should not be fond of.'

And again, on the 29th November 1792, he writes, 'your p——s I put into the fire as soon as answered.'

After perusing these, it may be thought, the defenders will not longer ascribe the destroying of Mr Simpson's notes to a fraudulent intention of hurting their defence in this cause. They may peruse the rest of the correspondence that has been reported, and they will only find, that the old mode of exchange was a continued theme of complaint and grievance to Mr Scott Moncrieff, during the whole course of the year 1792.

But to come to the letter, or private note, written after Dunlop's failure, and which Mr Gammill's suspicious curiosity made him combat against the opinion of his own counsel to obtain. Your Lordships must certainly look at the contents with surprise, after having seen such averments as the following, in the information for the defenders. 'This transaction never was communicated to the defenders by the Royal Bank, or by Mr Dunlop, either at the time it was entered into, or afterwards; and they remained in total ignorance of it, till the time of Mr Dunlop's failure, not so much as suspecting the existence of such a cash-account, nor did they know or suspect the less material alteration of the exchanges from twice a-week to thrice a-week.' And in another part, the defenders, after throwing out every species of abuse against the transaction, conclude, by way of climax, 'one half of the correspondence relative to it is destroyed; and a total concealment from the parties who are now said to have been chiefly interested in it.'

— P. 49.

Dated 20th, by
mistake, for 21st
of March 1793.

The letter runs thus, 'Just while writing this, Mr Gammill has called to give me the overwhelming information, that James Dunlop has stopt payment. This is by much the most alarming thing that has happened here: he was considered as the most opulent man in Glasgow. What the consequence of his fall may be, the Lord only knows. I had a letter from him this morning, saying,

' saying, that his accounts should, in consequence of our intima-
 ' tion, be withdrawn, and the balance paid up as soon as possible.
 ' It is no less than L. 9099, which vexes me sadly. Gammill says,
 ' that his Bank has nothing to do with this account, and that he
 ' told me so. He did say, *last time he was in town*, something a-
 ' bout this account being wholly Mr Dunlop's matter, *which I*
 ' *laughed at, as the account had long before that time been opened by Mr*
 ' *Dunlop, as agent for the Banking Company, and avowedly for the pur-*
 ' *pose of exchanging their notes, according to the copy of his letter,*
 ' *which I sent you; and I think it is impossible but that letter must fix*
 ' *the Company.* *Will you show the copy to some of your lawyers. If we*
 ' *are taken in there, it is a downright fraud.* Gammill says there is
 ' no danger; for he will have more than enough to pay every
 ' body: and certainly his property in this country is of prodigi-
 ' ous value, and he owes nothing abroad that I know of. Gam-
 ' mill says, that the Banking Company will go on; and he is to
 ' meet with Mr Graham and Carrick this afternoon, to settle about
 ' exchanging his notes. He wished me to attend; which I declined
 ' as I had really neither strength nor time for it: and I told him I
 ' could say nor do nothing without orders from you; and if he sent
 ' me any proposition, I should transmit it to you. He luckily took
 ' up L. 1400 of their notes to-day, with our own notes. There still
 ' remains L. 1100 odds. He hinted at our taking good bills for
 ' such notes as should come in, which I declined. What shall we
 ' do with these notes? Never was there such a scene of distress
 ' and difficulty? Gammill says none of the companies Dunlop is
 ' concerned in will fall. I do not think we have a bill in our
 ' custody with his name upon it, as he was quite out of the bill
 ' way, which gave us the more confidence in him.'

If faith is to be given to this communication by Mr Scott, made
 upon a momentous occasion, and certainly never intended to be a
 document of evidence, or even seen by any person except his
 friend at Edinburgh, it must be obvious, that several impor-
 tant considerations arise out of it, altogether destructive of the
 whole plea set up by the defenders.

In the *first* place, It shows the most rooted conviction on the
 part of Mr Scott Moncrieff, that the Company's security was, from
 the beginning, pledged to the Bank, and this conviction not in
 the least degree weakened or impaired by the most unexpected of
 events, the failure of Mr Dunlop; for it is most remarkable,
 that

that throughout the whole letter, there is not the least hint or doubt in regard to Mr Dunlop's not being invested with sufficient powers, the sole doubt being confined to the form of the missive of agreement; concerning which, Mr Scott seems a little uneasy, whether it would stand the test of legal nicety, and therefore wishes it to be shown to counsel; but concerning every thing else, he appears to be completely confident, and thus emphatically concludes, 'If we are taken in *there*,' (that is to say, if a catch is taken of any want of legal solemnities in the missive of agreement), '*it is a downright fraud.*'

2dly, It shows that, so far from the transaction's being kept secret and concealed, Mr Gammill himself was in the full knowledge of it; and the way this is told leaves no doubt of the candour of the other parts of the narrative. Mr Scott mentions, 'he, (Mr Gammill), did say, last time he was in town, *something* about this account's being wholly Mr Dunlop's matter, *which I laughed at, as the account had long before that been opened for Mr Dunlop, as agent for the Banking-company, and avowedly for the purpose of exchanging their notes, according to a copy of the letter, which I showed you.*' Now, Does Mr Gammill make any reply to all this? No; he goes off with an assurance from Mr Scott, that it was an account for the Company, upon the circumstances stated to him; and what does he do? This is a question, to which an answer may be guessed at, from what shall be immediately noticed. But, upon the footing that he disapproved of the account, it was most certainly his bounden duty to have come to an immediate explanation with Mr Dunlop; and if, as he says, Mr Dunlop was always possessed of a sufficiency of the Company's funds for answering all occasions, to insist upon his application of them, and to discontinue his operations upon this account. But it will be observed, that on this occasion Mr Gammill spoke nothing of Mr Dunlop being impressed with funds: He merely, in a faint manner, mentions something about the account being Mr Dunlop's matter, which had certainly struck Mr Scott at the time, as implying no more than that Mr Dunlop, as the manager of the Company's concern at Glasgow, would settle it, in the same manner, as it has been shown, he, on every former occasion, referred Mr Scott to Mr Dunlop for satisfaction concerning their transactions. Indeed, it is impossible to doubt, but Mr Scott must have then looked upon it as a mere shifting, such

such as had been practised on former occasions; for had there been any expressions of surprise at such an account existing, or any intimation of disapprobation of such an account having been opened as with the defenders, or any hint of Mr Dunlop's want of power to bind them, it is not in nature but that such circumstances must have made an impression upon Mr Scott, that would have brought matters to an immediate explanation. But, so far from this being the case, it appears, that Mr Gammill's observation had been so lightly conveyed, that it was treated with a laugh, perfectly natural, considering it as a shift; and that it made so little impression upon his memory, that he only recollected it when Mr Gammill called it forward, at his final resistance of the debt, after Dunlop's failure. But, however this may be, it is evident Mr Gammill had been put to silence by Mr Scott's answer: He had then no want of powers, nor funds impressed with Mr Dunlop, to plead; or if he had, he chose to keep them up for another occasion. But farther, this letter does no way indicate, that at the conversation alluded to, Mr Gammill, even then, for the first time, came to the knowledge of the transactions; there is no symptom of surprise, or that the account was any novelty to him, expressed under his saying something about its being Mr Dunlop's matter; and, from the want of these, and when some other circumstances are considered, which may account for this conversation, it may be fairly inferred, that he was antecedently in the knowledge of it. Thus, in Colin Auld's letter to Mr Gammill, of the 24th March 1794, he says, 'Some time in the end of February or beginning of March 1793, when I called upon Mr Scott-Moncrieff to get a receipt signed, he expressed a wish, that Mr Dunlop would reduce the balance of his account from L. 8000 or L. 9000, which it was at that time, to L. 1000, L. 3000, or L. 4000.'

Now, in Mr Gammill's letter to Mr Dunlop of 20th February, he writes, 'I refer you to the Bank's letter by this evening's coach; and you will please to discount no more bills in Glasgow for some time. *I intend to be in Glasgow to-morrow, and I trouble you with the inclosed letter for Mr Jackson, to stop my letters that may come for me by to-morrow's post.*' Accordingly, it will scarcely be disputed, that the conversation detailed by Mr Scott must have happened upon the 21st of February, at which time the balance upon the account in question was L. 8930, 10s.

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Now, is it not most natural to suppose, that the conversation took its rise in a demand from Mr Scott upon Mr Gammill, (in the same way as it appears from Auld's letter he was making upon Mr Dunlop), to reduce this balance to moderate bounds; and when Mr Scott thus came upon him, with a demand of little less than L. 9000, if it had been a new and unheard of thing, would Mr Gammill have received it without the smallest expression of astonishment or surprise? Yet nothing of this nature appears. He speaks *something* about its being Mr Dunlop's *matter*; and after Mr Scott's explanation, walks off satisfied, at least tacitly so. And should this reasonably, amongst honest men, have created a suspicion on the part of Mr Scott, and induced him to go to Mr Dunlop, and say, 'from some confused hint that dropped from Mr Gammill to-day, I begin to doubt whether he considers your exchange-account with the Royal Bank as a company concern, and they bound by the operations upon it; and I must therefore have a further explanation.' The most suspicious surely could not have gone farther than this. But could it be expected, in fairness, and from any gentleman conducting business with that liberality and confidence which is essential in all such transactions? Might not Mr Dunlop have answered, 'I told you at the beginning, that the transaction was sufficiently explained to be for the Company, by my missive of agreement of the 1st January; and accordingly you know that no operation has been made upon it, except for transacting the business of the Company in retiring their notes. How then can you doubt of its being a company business, or upon what ground can Mr Gammill doubt? If you had explained these particulars to him, he must have been satisfied, or if not, you might have trusted that he would have come to an understanding and explanation with me. You know, or may know, for it is matter of public notoriety, that he and I manage the whole business and transactions of the Company; and you cannot therefore, without doing violence to every thing like good faith, suspect that we keep our operations in these concerns secret from each other.' This, the pursuers submit, would have been a natural answer from Mr Dunlop, and must have stopt Mr Scott's mouth; for he had actually explained to Mr Gammill, and he had not thereafter reprobated; and the truth of the other observations coming from Mr Dunlop, he could not possibly dispute. In short, without Mr Scott's being possessed of a grovelling suspicion, he could

could never harbour an idea that Mr Gammill meant to play fast and loose, by lulling him asleep with a seeming satisfaction and acquiescence in his explanation, and keeping up a latent objection to serve an occasion. Had Mr Scott indeed seen Mr Dunlop's letter to Mr Gammill upon the occasion of the arrangement of 1789, wherein he writes, 'I thought it better to make the communication to Mr Scott by word of mouth than by letter, *which keeps us perfectly open* in case of any future change in their arrangements,' Mr Scott might possibly, from analogy, have supposed, that, in regard to the present arrangement, Mr Gammill might mean, in like manner, to be kept perfectly open in case of any future change; yet Mr Gammill could not have taken this as a compliment. If Mr Scott had hinted it to him, would he not have answered, 'Sir, you amaze me. Although Mr Dunlop may have expressed himself ambiguously in what you allude to, do you suspect me? But even as to Mr Dunlop you are mistaken. All the partners in our house are men of honour and integrity, and so conduct themselves by those with whom their business calls upon them to transact; and I disdain any such imputation as playing fast and loose.' It will be difficult for Mr Gammill to dispute that such would have been his language; and if so, where is the blame that could attach to the conduct of Mr Scott throughout this business?

But how can the defender be permitted to blame Mr Scott for not taking measures upon what dropped so lightly from Mr Gammill that he had not felt it? When the defenders, or Mr Gammill now, indisputably it is thought, not only informed of the petitioners complaints, and that these complaints had been removed by a new arrangement with Mr Dunlop their partner and agent, to whom the sole management of the exchanges had been avowedly committed, but also, familiarly acquainted with the nature and terms of that arrangement, took no step to bring matters to a point, though unavoidably convinced, both by the form of the arrangement, and by Mr Scott's requesting Mr Gammill to bring down the balance, that the petitioners relied upon the defenders as bound by the transaction. All pleas of ignorance were now done away; and it is apprehended to be utterly impossible for the defenders to maintain any pretensions to candour and fair dealing, if, resolved to be free of the new arrangement, *standing as it did in their name, and relied upon by the petitioners accordingly*, they did not take

take immediate measures to make their partner and agent rescind that arrangement, or get it new modelled, so as to stand in his own name simply and professedly as an individual.

The defenders, however, had in fact formed no such resolution. Mr Gammill will not pretend to say that he ever consulted with Mess. Houston and Macdowall upon the subject; nor can he be expected to be believed, if he pretends to say, that after approving of the arrangement by his letter of the 7th January to Mr Dunlop, he took upon him, when he learnt the particulars of that arrangement, to intimate a disapprobation of it to the petitioners, without consulting with the other partners. Mr Dunlop was then in high credit, and equal in the direction of the Company with Mr Gammill himself, and he stood pledged for the measure, as transacted in the department properly under his charge; and it is utterly incredible, that without the greatest consultation and deliberation Mr Gammill should have ventured to take a step that must have been highly offensive to Mr Dunlop, and fatal to that cordiality with which their business seems to have been formerly carried on.

But while Mr Gammill thus took care not to convey any thing to the petitioners that could create any reasonable suspicion of his disapproval of the transaction, it nevertheless appears that Mr Gammill made his own use of what he had learnt from Mr Scott-Moncrieff in the conversation that has been mentioned, of there being near L. 9000 due upon the account in question; for from the evidence in process it is proved, that at this time Mr Dunlop was indebted to the Company, upon his general transactions, a sum of no less than L. 21,589:15:8; and this Mr Gammill contrived to get so reduced, that at the failure, which happened in less than a month after, the debt was no more than L. 15,826, 13s. Knowing, therefore, of the account in question, and that by means of it Mr Dunlop was enabled to retire the Company's notes, and therewith purchase Edinburgh money, Mr Gammill chose so far to take the advantage of this account, as to squeeze out of Mr Dunlop, by pushing him to make remittances to Edinburgh, a sum of nearly L. 6000, and that immediately previous to the bankruptcy, when it is visible, from Mr Gammill's letters in the appendix, he must have entertained suspicions, not perhaps of Mr Dunlop's ultimate insufficiency, but of his ability at the time; and that, after making all out of him he could

could in this way, it was *he* that took the fatal resolution which occasioned the failure. The petitioners will forbear farther comment upon this conduct, than that it was certainly very adverse to any open disclamation of the transaction in question.

3dly, This letter from Mr Scott to Mr Simpson shows, that he considered Mr Dunlop as the chief prop and corner-stone of the Greenock Company, insomuch that he seems to have doubted whether it would go on after his failure. The pursuers are most happy to find that Mr Scott's doubts in this respect were not verified; but most undoubtably he was not singular in holding Mr Dunlop as at the head of the Company, and one of the most opulent men in the west of Scotland: and it is impossible to peruse his letter, and not to be satisfied that there appears prudential grounds for pausing upon such an event as his failure, in the future operations with the Company, more especially as they firmly considered them to be already justly in their debt to the extent of L. 9000. But the obloquy thrown out against the Royal Bank, as if this pause was entirely meant to condescend the defenders to pay down this debt, under a belief that it was objectionable, is most calumnious and unfounded. It is clear the same thing might have happened from what Mr Scott writes, although they had had Mr Dunlop's bills running on Edinburgh to the same extent, or although there had been no debt at all; for although it was spoke of as a condition of continuing the operations, that this debt should be discharged, this was not so much with a view to the debt itself, as a test of the strength of the house: for it has been shown, that all along Mr Scott retained an unshaken conviction that it was a company debt; but only wished, upon Mr Gammill's disputing it after the failure, to have the opinion of lawyers, whether the missive of agreement on which it arose would bear legal scrutiny; and with regard to this he was not kept long in suspense; and thereafter no step that was taken can, with any justice, be said to have proceeded from an idea that the Company were not fully liable for it.

The defenders, however, will no doubt argue now, as they did formerly, that the anxiety with which this letter of Mr Scott Moncrieff was withheld, must imply a consciousness on the part of the pursuers that it was unfavourable to their cause. Whether it is in fact so, will be judged from its contents; but if the defenders would be satisfied that there is no room for such a presumption, upon being shown the opinion of counsel before

the commencement of the action, that the facts it communicates, if proved, was decisively against them, they are welcome to a perusal of the opinion. But the pursuers have stated throughout, that these private communications were of such a nature, that the exposition of them might be attended with serious consequences to third parties. It was peculiarly so with this letter, wrote upon the alarming occasion of Mr Dunlop's failure, which treated of the probable consequences of that event upon the mercantile interest, in a very particular manner; and rather as make public what was there communicated, the pursuers, out of justice to third parties, were bound to sacrifice the present stake, great as it is. But at the same time they were advised that their cause did not require the additional support of what is there mentioned; and as the letter was not *per se* evidence of it, it was in every view just and prudent to withhold it, and if possible stop the defenders in their career of prying into such sacred and confidential communications, which, if fully indulged, threatened the mischievous consequences that have been mentioned. Now, however, that they have got their full swing, and that with a latitude for which it will be difficult to find a precedent, but happily without, it is trusted, the danger to the pursuers and third parties that was dreaded, the defenders are most welcome to make their own use of what their curiosity has thus brought out, which is all that ever passed in any way regarding the present business; and what concerned third parties has been fortunately still preserved secret.

But while the pursuers are able to give this satisfactory explanation of their conduct, in wishing to keep sacred what was evidently meant, in every view, to be kept so, although in favour of their own cause, they are somewhat at a loss to know how Mr Gammill will be able to account for keeping his thumb all along upon the conversation related in Mr Scott's letter, and boldly averring, in the manner that has been mentioned, that the whole business was studiously concealed, and never heard of till Dunlop's bankruptcy; for if any credit is to be given to what Mr Scott states, Mr Gammill had then a full recollection of the circumstance, and put Mr Scott, who had forgot it, in mind of it; and it must appear unaccountably strange, that it should have instantly thereafter forsaken Mr Gammill's memory, and never once again glanced upon it in the course of this action, which immediately ensued.

The defenders were pleased, moreover, to impeach the pursuers with irregularity in the way they conducted their correspondence as
nothing

nothing could be found in their public letters regarding the transaction. With what candour that was done, will now be judged, when it is seen, that in the identical same manner did the defenders themselves conduct their business. The public, or official letters, were managed by the clerks; but the spring and movements of the whole was regulated by the private correspondence between Mr Dunlop at Glasgow and Mr Gammill at Greenock.

The pursuers have lastly to take notice of what the defenders have laid much stress, and reared much clamour upon, namely, the mischief that did or might occur to them from this transaction. They say, in fact, that it did amount precisely to the sum now claimed, and it might have been to any amount.

As to the first, it may be disputed from a very simple statement. Mr Gammill's letters to Mr Dunlop, that have been recovered, are full of anxiety about their notes going to Edinburgh, (which is to say, that from the irregularity and unfairness of the exchange at Glasgow, they were sent from thence on purpose, by the holders, to be exchanged at Edinburgh), and the provision to be made for meeting them there; and his letter of the 7th January, approving of this transaction, proceeds upon the footing of this disagreeable circumstance being removed. Now, it does in fact appear so far to have had this effect. The defenders themselves have called for, from Sir William Forbes and Company, a state of their notes taken up from the Royal Bank, at the different exchanges at Edinburgh, from February 1792 till Mr Dunlop's failure; and it from this appears, that from the 7th January 1793, (when it is reasonable to suppose this arrangement might have its operation upon the exchanges at Edinburgh), down to the failure, the amount of the defenders notes taken up by Sir William Forbes and Company from the Royal Bank, is short upwards of L. 3000 to what their amount was for an equal period of time immediately preceding. Had matters remained upon the old footing, therefore, it must be supposed that the defenders would have been addebted to Sir William Forbes and Company this L. 3000 odds, in consequence of their taking up that additional number of their notes; and in the same manner, it must be supposed, that Mr Dunlop's bills upon Edinburgh were running for the balances of the exchanges at Glasgow, in the same manner as before, (and which the defenders have admitted they were liable for), and these immediately preceding the arrangement amounted to L. 8000; so that, independently

The transaction in question was neither in its effects nor in its constitution unfavourable to the defenders.

Exhibits by Mr S. Anderson, No 41.

of

of what Mr Gammill had the address to wring out of Mr Dunlop on the approach of the failure, amounting to near L. 6000, it is far from being clear that, had this account not been opened, the defenders would have been one penny in a better situation in regard to their insolvent partner.

For, *2dly*, It is the most gross affectation, not to give it a harsher term, to say that this arrangement necessarily put it in Mr Dunlop's power to hurt or ruin his Company. It is well known that banks do not look for their profits from money lent out at 5 per cent. interest. On the contrary, it is out of the nature and run of their business; and it is only on occasions such as this, where the balance, from the nature of the business, might float indiscriminately on one side of the account or the other, that such interest is any object. In the present case, therefore, it was Mr Scott's duty to take care that the defenders should not have a permanent loan upon the account, or that they should be indebted to the Bank to any greater amount than what the nature of their business seemed to require, and their responsibility authorize. Accordingly, speaking of the extent of the credit that might be necessary, Mr Scott, in his letter to Mr Simpson of the 28th December, says, 'It may, I suppose, be L. 4000 or L. 5000; but 'if at a time it should be L. 10,000, it will only be so for a few 'days; and in fact it is not much less at present.' And again, in his letter of 1st January he writes: 'The sum due us will never, 'he (Mr Dunlop) supposes, be greater than it is at present. Perhaps for a day or two it may be 6, or 8, or 10 m; but I explained to him fully, that it was not meant to be a permanent advance, *or any thing more than was necessary for taking up his notes, 'and giving him a few days to repay us; and this he understands to 'be our meaning.*' To this Mr Scott evidently wishes to keep, as it has been shown, that, in February 1793, he was pressing Mr Dunlop and Mr Gammill to keep it within the bounds: and this while it shows that Mr Scott's attention to the interest of the Royal Bank would necessarily have prevented any abuse of the account on the part of Mr Dunlop, had he been so inclined, at the same time disproves, independently of the other circumstances that have been noticed, a variety of insinuations thrown out, that the letters in March from Mr Scott to Mr Dunlop, calling for the balance, were written from an apprehension of an approaching failure,

Exhibits with
Information,
p. 13, 14.

ure, and that the Company were not liable. Indeed Mr Gammill, of all others, ought to have been sparing in this, as there is no doubt but he was the only one who did suspect Mr Dunlop before the failure, and, from what has been formerly mentioned, was the first that knew of the event.

But while it is thus shewn, that Mr Dunlop neither did nor could abuse the account in question to the prejudice of his Company, what powers otherwise, it may be asked, had he to involve them? These have in general been already shewn. In spring 1792, when Mr Gammill appears to have been at London, the whole management of both establishments devolved upon him; and surely then the Company laid themselves completely in his mercy.

But was even this the time when he exercised the greatest liberty with them? The account of the balances on his account-current with them, from January 1792 to the failure, (in the Appendix, N^o 6.) proves, that he chose to be in their debt, on many other occasions, much more than what he was then, and double of what he was at his failure. Thus, during all the month of July 1792, when Mr Gammill was officiating at Greenock, the balance against Mr Dunlop, in his transactions with the Company, was always considerably upwards of L. 30,000, and on the 21st of that month, no less than L. 35,000 odds, and that besides his bills current on Edinburgh for the balances of exchanges at Glasgow, and the notes he had almost the daily receipts of there, which might have increased that balance to L. 50,000. At his failure it was only L. 15,000 odds.

Excerpts by D.
Murray, No. 5.
p. 3.

This consideration seems to sum up the measure of candour and fairness on which the whole defence is founded, that the pursuers had opened a door for Mr Dunlop's betraying and ruining the Company which he had not before.

But before concluding, it may be proper to take notice of some questions that were put from the Bench before the Judges delivered their opinions. It was asked,

1st, Was this account of advantage to the Greenock Bank?

2^{dly}, Was it so to Dunlop? And,

3^{dly}, If it is customary for the Banks to borrow money at 5 per cent.?

To these it may be answered,

Q

As

As to the *first*, The advantage to the Company was such a one as is derived by any one who retires his acceptance, or other obligation under which he lies, or repairs an injury he has occasioned to another.

Had the defenders not been disposed voluntarily to do this by the pursuers, it has been shown, that they had it in their power to compel them, in the same way as the holder of a promissory-note has it in his power to compel the acceptor to pay it when due: and this being the case, the account was opened upon an advantageous footing for the defenders; because it relieved them from the immediate necessity of always having an uncertain quantity of cash provided to answer the demands; and besides, was upon more favourable terms than the account they held with Sir William Forbes and Company, inasmuch as not only was there to be no commission charged on it, but an addition of 1 per cent. was to be allowed on the credit side, over what the other was to allow.

As to the *2d*, It has been shown, that the account could not be of farther advantage to Mr Dunlop than as a partner of the Company; as, from the terms of the agreement and the consequent operations, there neither did nor could pass upon it any thing except company-transactions. And

As to the *3d*, It has been shown, that this account had not the most remote affinity to a permanent loan of money: That this Company at least were accustomed to be indebted to another banking one, upon an account similar to the present, where, besides a commission, 5 per cent. was charged upon the debit, and only 3 allowed upon the credit side. And finally, it may be answered, That in their various transactions with each other, banks and banking companies must, from the nature of the thing, get into one another's debt; and that invariably 5 per cent. is charged upon it. And that, so far from the account in question being any novelty, one precisely similar has existed for many years between the Bank of Scotland and the Royal Bank.

It is humbly hoped, then, that in every view of the case your Lordships must be satisfied that the defence of Mess. Dunlop, Houston, Gammill, and Company, stands completely confuted in its essentials, and in all its connections and appendages; and that the best

best thing that could befall them, were they still to contend against the petitioners claim, would be the destruction of every paper they have hitherto given in, and the obliteration from the memory of the Court of every thing that has been stated *viva voce* on their part. In such circumstances, the petitioners trust that they may, with some confidence, expect, that the primary prayer of their petition will be granted, and that they may now, with propriety, conclude with repeating it.

May it therefore please your Lordships, to alter the interlocutor reclaimed against, and decern in terms of the petitioners libel.

According to justice, &c.

ALLAN MACONOCHE.

ANDERSON, MARY

APPENDIX.

N^o I.

STATE of the Notes retained by JAMES DUNLOP
from the Tuesdays Exchanges at Glasgow.

1792.	L.	s.	1792.	L.	s.
Jan. 3. By their notes retained,	500	0	Brought up, 18,027	0	
10. Ditto,	500	0	Aug. 21. By their notes retained,	525	0
17. Ditto,	530	0	28. Ditto,	525	0
24. Ditto,	500	0	Sept. 4. Ditto,	525	0
31. Ditto,	525	0	11. Ditto,	530	0
Feb. 7. Ditto,	530	0	18. Ditto,	525	0
14. Ditto,	680	0	25. Ditto,	500	0
21. Ditto,	600	0	Oct. 2. Ditto,	500	0
28. Ditto,	550	0	9. Ditto,	525	0
Mar. 6. Ditto,	525	0	16. Ditto,	525	0
13. Ditto,	525	0	23. Ditto,	525	0
20. Ditto,	735	0	30. Ditto,	525	0
27. Ditto,	500	0	Nov. 6. Ditto,	525	0
April 3. Ditto,	562	0	13. Ditto,	525	0
10. Ditto,	525	0	20. Ditto,	525	0
17. Ditto,	575	0	27. Ditto,	625	0
24. Ditto,	550	0	Dec. 4. Ditto,	525	0
May 1. Ditto,	540	0	11. Ditto,	1856	16
8. Ditto,	525	0	18. Ditto,	1050	0
15. Ditto,	555	0	24. Ditto,	1470	0
22. Ditto,	525	0	31. Ditto,	525	0
29. Ditto,	1260	0	1793.		
June 5. Ditto,	525	0	Jan. 8. Ditto,	630	0
12. Ditto,	500	0	15. Ditto,	600	0
19. Ditto,	525	0	22. Ditto,	1100	0
26. Ditto,	550	0	29. Ditto,	1325	0
July 10. Ditto,	500	0	Feb. 5. Ditto,	600	0
17. Ditto,	535	0	12. Ditto,	630	0
24. Ditto,	500	0	19. Ditto,	1500	0
31. Ditto,	525	0	26. Ditto,	2000	0
Aug. 7. Ditto,	525	0	March 5. Ditto,	550	0
14. Ditto,	525	0	12. Ditto,	1000	0
	L. 18,027	0			
	(A)			L. 42,219	16

(2)

N^o II]

**EXCERPTS, referred to in the Deposition of
WILLIAM PENNEY.**

First Excerpts.

	Delivered to Mr Dun- lop in Greenock Bank-notes.	Received from Mr Dunlop in Royal Bank-notes.	Balance.
1793.			
Feb 26.	L. 2894 16	L. 41 8	L. 2853 8
Mar. 5.	3769 18	160 2	3609 16
12.	1658 4	235 11	1422 13
19.	2317 9	132 12	2184 17
	L. 10,640 7	L. 569 13	L. 10,070 14

Additional Excerpts.

1793.			
Jan. 2:	L. 3014 11 0	L. 787 12 0	L. 2226 19 0
8.	2524 6 0	319 3 0	2205 3 0
15.	2344 13 0	51 11 0	2293 2 0
22.	2384 16 0	51 15 0	2333 1 0
29.	2145 10 0	285 11 0	1859 19 0
Feb. 5.	3636 7 0	213 12 0	3422 15 0
12.	2731 2 0	277 11 0	2453 11 0
19.	2021 4 7	133 7 0	1887 17 7
	L. 20,802 9 7	L. 2120 2 0	L. 18,682 7 7

Glasgow, 6th February 1795.

What is written above are the excerpts, and additional excerpts,
referred to in the deposition of William Penney, of this date.

(Signed), WILLIAM PENNEY.

*Robert Grame,
Matthew Taylor.*

N^o III.

N° III.

EXCERPTS referred to in the Deposition of
CHARLES GIBSON.

The notes were
given away on the
3d.

1793.

Jan. 4.	Balance due by Greenock Bank,	L. 1839	o	o
5.	Given Mr Dunlop in Greenock notes,	1405	o	o
12.	_____	2375	o	o
17.	_____	1483	o	o
19.	_____	2977	o	o
24.	_____	2260	o	o
26.	_____	1815	o	o
31.	Balance due by Greenock Bank,	1726	o	o
Feb. 2.	Given Mr Dunlop in Greenock notes,	2677	o	o
7.	_____	714	o	o
14.	_____	1595	o	o
16.	_____	1214	o	o
21.	_____	3058	o	o
28.	_____	3358	o	o
Mar. 7.	_____	1934	o	o
14.	_____	3068	o	o
		L. 33,498	o	o

Glasgow, 7th February 1795.

What is above written, are the excerpts referred to in the
deposition of Charles Gibson, of this date.

(Signed),

CHA^s GIBSON.

Robert Grame.

Matthew Taylor.

N^o IV.

STATE of Mr DUNLOP's Remittances on account of the Company, to Sir WILLIAM FORBES and Company.

1792.		L.	s.	d.	1792.	Over,	L. 82,443	14	0
Jan. 7.	To sum paid Sir W. Forbes & Co. this day,	4000	0	0	June 20.	To sum paid into Sir W. Forbes & Co. this day,	1000	0	0
Jan. 14.	Ditto,	4000	0	0	23.	Ditto,	4000	0	0
20.	Ditto,	1000	0	0	27.	Ditto,	1500	0	0
28.	Ditto,	1000	0	0	30.	Ditto,	1500	0	0
31.	Ditto,	2550	0	0	July 7.	Ditto,	2000	0	0
Feb. 4.	Ditto,	1400	0	0	14.	Ditto,	2000	0	0
11.	Ditto,	3000	0	0	Aug. 4.	Ditto,	2000	0	0
18.	Ditto,	2000	0	0	8.	Ditto,	2500	0	0
Mar. 10.	Ditto,	4000	0	0	15.	Ditto,	1000	0	0
13.	Ditto,	5000	0	0	25.	Ditto,	1000	0	0
17.	Ditto,	5000	0	0	29.	Ditto,	3000	0	0
24.	Ditto,	3000	0	0	31.	Ditto,	2000	0	0
28.	Ditto,	2000	0	0	Sept. 5.	Ditto,	1000	0	0
31.	Ditto,	3000	0	0	8.	Ditto,	3000	0	0
April 7.	Ditto,	4000	0	0	12.	Ditto,	1000	0	0
14.	Ditto,	4000	0	0	15.	Ditto,	2000	0	0
18.	Ditto,	2000	0	0	19.	Ditto,	5000	0	0
21.	Ditto,	3000	0	0	22.	Ditto,	2000	0	0
28.	Ditto,	3000	0	0	24.	Ditto,	1000	0	0
May 2.	Ditto,	1000	0	0	26.	Ditto,	2000	0	0
5.	Ditto,	4000	0	0	29.	Ditto,	3000	0	0
12.	Ditto,	1000	0	0	Oct. 6.	Ditto,	3000	0	0
17.	Ditto,	993	14	0	13.	Ditto,	4000	0	0
19.	Ditto,	2000	0	0	20.	Ditto,	2500	0	0
23.	Ditto,	1000	0	0	24.	Ditto,	2500	0	0
26.	Ditto,	1000	0	0	27.	Ditto,	3000	0	0
30.	Ditto,	1000	0	0	Nov. 3.	Ditto,	3000	0	0
June 2.	Ditto,	2000	0	0	10.	Ditto,	2000	0	0
6.	Ditto,	1000	0	0	14.	Ditto,	2000	0	0
9.	Ditto,	2000	0	0	15.	Ditto,	493	5	1
13.	Ditto,	7000	0	0		Ditto,	990	0	0
16.	Ditto,	1500	0	0	16.	Ditto,	994	11	6
L. 82,443 14 0					Carried forward, L. 150,421 10 6				

Brought forward, L.150,421 10 6			L.191,421 10 6		
1793.			1793.		
Nov 19. To sum paid Sir			Jan. 19 To sum paid Sir		
W. Forbes & Co. this day,	1000	0 0	W. Forbes & Co. this day,	2000	0 0
21. Ditto,	-	1500 0 0	26. Ditto,	-	3000 0 0
24. Ditto,	-	5000 0 0	30. Ditto,	-	1000 0 0
Dec. 1. Ditto,	-	4000 0 0	Feb. 2. Ditto,	-	3000 0 0
5. Ditto,	-	1500 0 0	6. Ditto,	-	3000 0 0
8. Ditto,	-	5000 0 0	9. Ditto,	-	2000 0 0
15. Ditto,	-	4000 0 0	16. Ditto,	-	1000 0 0
19. Ditto,	-	5000 0 0	23. Ditto,	-	2000 0 0
22. Ditto,	-	3000 0 0	Mar. 2. Ditto,	-	4000 0 0
28. Ditto,	-	1000 0 0	6. Ditto,	-	1000 0 0
29. Ditto,	-	3000 0 0	9. Ditto,	-	1000 0 0
1793.			11. Ditto,	-	1000 0 0
Jan. 5. Ditto,	-	4000 0 0	13. Ditto,	-	1000 0 0
12. Ditto,	-	2000 0 0	16. Ditto,	-	5000 0 0
16. Ditto,	-	1000 0 0	20. Ditto,	-	1000 0 0
L.191,421 10 6			L. 222,421 10 6		

N^o V.

LETTERS from Mr GAMMILL, and, in his absence,
from ROBERT CALDWELL, the Cashier at Greenock,
to Mr DUNLOP, arranged according to their Dates.

Greenock, 2d January 1792.

This week the Bank will require a remittance to be made to Sir William Forbes and Company, for more than will probably be convenient for you, as the Bank is in their debt L. 4049, exclusive of to-morrow's exchange; so that you will please to remit them to-morrow and this week as largely as you can.

Excerpts of Mr Caldwell's Letters to Mr James Dunlop.

Greenock, 6th February 1792.

When the instructions I wrote are signed, I will thank you for
(B) them.

them. Whatever other directions may occur to you will be attended to particularly.

Greenock, 8th February 1792.

I note what you say respecting our remittances, which indeed have not been so respectable. I think however you may count upon their being in future at least equal to your exchanges. But I suppose that, in the course of a fortnight, we shall have occasion to draw to Mr Wright for ten or twelve thousand pounds at 20 days date, of which I shall advise you when we draw.

Greenock, 13th February 1792.

Our receipts last week were but small; but every shilling we received on Glasgow was sent to you. You will find to-day's remittance pretty considerable, and, I hope, equal to your exchange, which I should imagine will not be high. That in Edinburgh was L. 4797 on Friday, a proof that part of the notes paid away that day se'ennight had only then been exchanged: for our payments since have been inconsiderable; and our discounts last week were only L. 5000 odds.

As the Edinburgh exchange has been so high, we require from you this week L. 4000, to square Sir William Forbes and Company's account, and provide for the exchanges.

Greenock, 15th February 1792.

I see your exchange yesterday was favourable;—ours with the Branch was peculiarly so, as we had a balance of L. 1533 against it; and that in Edinburgh on Monday was only L. 225. It will be unnecessary, therefore, to remit to Sir William Forbes and Company more than L. 2000 this week. I could wish to see your account more respectable before we draw to Mr Wright, which I suppose will be about the 22d current.

We have made you a good remittance by this opportunity.

Greenock, 20th February 1792.

There has a pretty large sum gone from us last week; I should therefore suppose your exchange will be rather high; against which you will find a considerable remittance by this opportunity.

Greenock,

Greenock, 22d February 1792.
 Yesterday we drew to Mr Wright at 20 days date for only L. 700.

Greenock, 19th March 1792.
 I have now to mention, that, after deducting Mess. A. Houstoun and Company's note, we will require for Sir William Forbes and Company this week L. 3000. This sum will be short; but as we may receive something from Sir J. Campbell, it will be as well to keep the sum under.

The exchange in Edinburgh on Friday was not high, considering the sums gone out. It amounted to L. 3549. Yours I should think would therefore be pretty high; for which I hope, however, that to-day's remittance will be nearly equal, it being considerable in note.

Letter, Mr Gammill to Mr James Dunlop.

London, 17th March 1792.
 I was duly favoured with your letter dated the 6th current advising that you had been at Greenock, and found the Bank matters all right, which gave me pleasure.

Letters, Mr Caldwell to Mr James Dunlop.

Greenock, 26th March 1792.
 Yesterday I received a letter from A. B. covering his two draughts on London at 90 and 100 days date, pr. L. 1250; which I do not chuse to discount till I have your approbation, not knowing how these late sugar speculations may have affected him. I therefore inclose a letter for him, returning the bills, which please send to him if you do not chuse them done; and I at the same time inclose another letter for Mr B. desiring him to apply to you for the proceeds of the bills to-morrow, should you approve of their being done, which I am inclined to think you may, as all his draughts have hitherto been accepted.

Greenock, 28th March 1792.
 You may depend upon it, that as I have hitherto done, you shall be as fully remitted as possible this week.

Greenock, 4th April 1792.
 You will be enabled to make out your remittance to Edinburgh the

the more readily from the notes sent you to-day, of which there are L.600 in large Edinburgh notes.

Letters, Mr Gammill to Mr James Dunlop.

Greenock, 9th April 1792.

I have not had time to look particularly into the Bank business since my return, but I am sorry to observe a great decrease in our circulation since I went to London. Your account-current, by the Bank books, after crediting you for the L.4000 paid Sir William Forbes and Company on Saturday, is debtor above L. 19,000. You will have to remit to Sir William Forbes and Company, L.4000 by Friday, and L.1500 on the Monday following.

Greenock, 30th April 1792.

The Exchanges at Edinburgh on Friday, was L.3387, part of which, with the Royal Bank, L.2618. The Bank is now indebted to Sir William Forbes and Company about L.2000, exclusive of this day's exchanges; so that you will please to regulate your remittance thereto this week, and to remit Friday's exchanges.

Greenock, 4th May 1792.

The Bank makes you all the remittances they can with convenience, and they will remit you as fully as in their power till the term is over.

Greenock, 7th May 1792.

You may rest assured that I shall continue to pay due attention to the interest of the Bank; and as I can accommodate the Bank with some Edinburgh money this week, you need not remit to Sir William Forbes and Company more than L.1000 till I advise you further, as I wish to make your remittance at the term as moderate as possible.

Greenock, 28th May 1792.

The Bank had occasion to draw in favour of Sir Michael Stewart on Edinburgh this last week for L.1000; so that you will please to remit to Sir William Forbes and Company, in the course of this week, L.4000, exclusive of the L.1000 which I wrote you to be remitted us this day.

The

The bill drawn by the Bank, in favours of the excise, on Sir William Forbes and Company, L. 8250, falls due the 10th-13th June.

Greenock, 30th May 1792.

The Bank having got some Edinburgh money, you need not remit more than L. 2000 on Friday, and L. 1000 on Monday following.

Greenock, 11th June 1792.

You know that the bill drawn by the Bank in favour of Collector Wright falls due the 13th current, for which you will remit by that date; and if you remit further L. 1500 in the course of this week, I hope it will answer for all the Edinburgh money that we have occasion for at this time.—I am, &c.

Letter from Mr Caldwell to Mr James Dunlop.

Greenock, 4th July 1792.

The terms on which we buy London bills are 20 days par, except on those received from you, on which we allow 25 days on bills having 110 days to run, and all the days off of such bills as exceed that date.

Letters from Mr Gammill to Mr James Dunlop.

Greenock, 23d July 1792.

The Bank-account with Sir William Forbes and Company is so full, that you need not remit them further till I advise you on Wednesday.

Greenock, 6th August 1792.

I wrote you the 4th current, and to which I refer you, since I am not favoured with any letters from you at present. I cannot say if we shall have occasion for your making any remittance to Sir William Forbes and Company this week: I shall advise you on Wednesday.

The Bank makes you a very large remittance to-day, which I hope will, in a great measure, prevent our notes from going into Edinburgh this week.

On Saturday the Bank drew on Edinburgh the following bills in favour of the customhouse.

(C)

At

At ten days date, L. 2500; at twenty days date, L. 2684; and at thirty days date, L. 2500, which you will have in view to remit for at these dates.—I am, &c.

Greenock, 20th August 1792.

As I supposed our exchange at Edinburgh was low on Friday, this week you will please to remit to

Greenock, 12th September 1792.

I am glad that you have a

was unretired from the Royal Bank L. 4107. Do you know how this exchange came to be so high on Friday? Had not the Bank got some Edinburgh money here, they would have been deep in Sir William Forbes and Company's debt. I hope that you will have remitted them

Greenock, 26th November 1792.

To-day the Bank drew on Sir William Forbes and Company, in favour of Collector Wright, for L. 8902, at 20 days date, which you will please to have in view to remit for at the time this bill falls due.

Greenock, 3d December 1792.

I hope that you got well home on Friday evening. Our exchange at Edinburgh on Friday was no less than L. 5496, and to-day we are indebted to them, Sir William Forbes and Company, L. 2753, exclusive of this day's exchange at Edinburgh; so that I hope you have remitted them the L. 1500 formerly advised of; and this week by Friday or Saturday you will please to remit them five thousand pounds further, or a larger sum, if you can with conveniency.

Greenock, 10th December 1792.

You will please to remit to Sir William Forbes and Company, by Friday or Saturday, four thousand pounds to answer our exchange.

Greenock, 14th December 1792.

Our exchange at Edinburgh on Monday was L. 1588, which was uncommonly high; L. 1003 of which was with Sir William Forbes and Company. You probably can judge how large a sum got with them.

You have got all the remittances which the Bank could make you since you came last home. They will send you three bills on Glasgow, each L. 500, due the 15-18th current.

Greenock, December 17th 1792.

I trust to your remitting Sir William Forbes and Company this week, as far as in your power.

I refer you to the inclosed letter from Joseph Sanderfon; please to advise what answer I should send him.

Greenock, 18th December 1792.

We have no London post to-day, so that I can inform you of nothing new from Mess. Moffat and Company. Inclosed is a letter for them. If you approve of the contents, please to seal it, and

(D)

forward

forward it by to-morrow's post. This is to go in the morning by the coach, so that it will reach you in good time to overtake the post.

Greenock, 19th December 1792.

Since writing on the other side, I received the inclosed by post, and to which I refer you. You will please to return it, advising what occurs to you.

Greenock, 24th December 1792.

We are a good deal in debt to Sir William Forbes and Company. I hope that you can remit them L. 2500 to-morrow, and L. 4000 further by Friday or Saturday.

Greenock, 26th December 1792.

I hope you will have it in your power to remit to Sir William Forbes and Company, this week, the sum formerly advised.

Please to write me this evening, so as to come here by to-morrow morning's coach, what further directions I should give to Mess. Moffat and Company, with any other thing that occurs to you, so that I may write these gentlemen in course.

Greenock, 16th January 1793.

It is surely a very difficult matter to fix the proper time for purchasing stock; but as you have the opportunity of conversing with many intelligent people upon that subject, and from your own experience and knowledge of that business, I think you are as well qualified to give an opinion as most people, and I shall be glad that you advise me from time to time what occurs to you upon that subject.

Greenock, 25th January 1793.

I think that we have settled matters so as to exchange with the Edinburgh Branch here, and prevent them sending our notes to Edinburgh.

Greenock, 30th January 1793.

I observe that our exchange was higher than usual at Glasgow yesterday; you will probably be able to judge if many of our notes have gone to Edinburgh this week.

Greenock,

Greenock, 4th February 1793.

I was favoured with your letter, dated the 31st ult. You would learn at Edinburgh, that our exchange there on Friday was L 4445, not one shilling of which was with the Bank of Scotland. To-day we have settled to exchange with the Branch here once a-week.

To-morrow you will please to remit to Sir William Forbes and Company L. 3000, and L. 3000 further by Friday or Saturday. The remittance that you will receive from the Bank to-day will make your exchange at Glasgow to-morrow very easy.

Greenock, 6th February 1793.

Our exchange at Glasgow was considerably higher yesterday than I expected, and the Royal Bank had a very great number of our notes. I suppose you may be able to learn what way they went there. I wish you could prevail upon Mr Graham and Mr Carrick to exchange with you once a-week as formerly, so as to prevent trouble to our friends at Edinburgh.

Greenock, 8th February 1793.

To-day the Bank sends you a large remittance, in bills due the beginning of next week. I expect to be in Glasgow some time the week after next.

Greenock, 11th February 1793.

Your two bills will not be presented for acceptance before the 18th current, so that you have time enough to advise Mr Fraser. I did not understand that you wished to exchange them for other bills at any rate, that is disagreeable, especially as it is of no consequence to you, when you do not pay a commission.

Greenock, 20th February 1793.

I refer you to the Bank's letter by this evening's coach; and you will please to discount no more bills in Glasgow for some time. I intend to be in Glasgow to-morrow, and I trouble you with the inclosed letter for Mr Jackson, to stop my letters that may come for me by to-morrow's post.

Greenock, 23rd February 1793.

By your letter to the Bank, I observe that you are considerably short

short of the remittance you mean to make to Sir William Forbes and Company. We are in their debt L. 1651 exclusive of this day's exchange; but as the Bank have got some Edinburgh money payable the middle of this week, you need not remit Sir William Forbes and Company to put them in cash sooner than Friday; then you may remit them L. 5000, and I am afraid that we shall then remain in their debt.

Greenock, 1st March 1793.

On the 27th ult. the Bank drew on Sir William Forbes and Company, in favour of Collector Wright, at 20 days date, for L. 9000. You will please to have it in view to provide for that remittance.

I trust to your remitting Sir William Forbes and Company, as formerly advised.

Greenock, 4th March 1793.

I am favoured with your letter of the 2d current, by which I observe you were one thousand short of your remittance to Sir William Forbes and Company, which I hope you will remit tomorrow; and I shall advise you by Wednesday, what remittance you should make to Sir William Forbes and Company on Friday. I suppose it may be about three thousand pounds.

Greenock, 6th March 1793.

I am favoured with your letter of yesterday's date; and I observe that you discounted some bills in Glasgow yesterday, which I did not expect, after what I had wrote you. I hope you will make the remittance to Sir William Forbes and Company this week, as formerly advised.

I shall be glad to see you on Saturday, to dine with me.

Greenock, 11th March 1793.

On Saturday I informed you that our exchange at Edinburgh, on Friday, exceeded any thing I possibly could have imagined; and I observe that you have remitted Sir William Forbes and Company, on Saturday, only one thousand pounds. To-day we are in their debt no less than L. 4500, exclusive of this day's exchange; so that to-morrow I expect you will remit them at least three thousand pounds, and continue remitting them every day this week,

week, so as to clear our account with them, and answer the Tuesday's exchange, as it is very disagreeable to be in their debt, especially in these times, and when you have so much money of the Bank's in your hands. Nothing could make me leave home at this time, but to get Sir William Forbes and Company fully remitted; and, in case of need, I shall wait on you in Glasgow for that purpose; but I hope there will be no occasion for this.

The times are now so distressing, that I do not know well how to act; and I wish to give the people here every accommodation in my power, with safety, in these very distressing times; therefore you will please to keep Sir William Forbes and Company remitted as fully as possible.

Greenock, 12th March 1793.

Since writing the above, I am favoured with your letter by this morning's coach. Please to send down two bills on London for one thousand pounds each, at 60 days, such as you will indorse *at your own risk*; and the Bank will discount them, and send them forward for acceptance; and they will send you the value, by bills on Moffat and Company, at a short date.

Greenock, 13th March 1793.

I wrote you yesterday, and to which I refer you. And I am favoured with your letter of same date, by which I observe that our exchange was very low at Glasgow yesterday, which should have put in your power to make the remittance wanted for Sir William Forbes and Company with great ease, as your account-current is just now debtor to the Bank above twenty thousand pounds, exclusive of this day's remittance to you; so that I fully depend on your remitting to Sir William Forbes and Company this week, so as to square their account. This will prevent me from writing them, making an apology. You know that I have been always very willing to accommodate you with the Bank money, and am still so; but when that money is wanted to pay the debts of the Bank, you surely cannot expect it to remain in your hands. You are sensible that I never wanted any accommodation whatever from the Bank; and it would be highly unreasonable in any of the Bank partners to expect a large sum of the Bank money to remain in their hands, when it was wanted, either to pay the debt of the Bank, or for the accommodation of the

the public here, who have been friends of the Bank; and in a time of scarcity of money like the present, we are bound, by honour and every other tie, to give the people in this town and Port Glasgow all the accommodation that is in our power, with conveniency and safety; and I trust that I shall not have occasion to say any thing farther about your remitting to Sir William Forbes and Company fully. Our exchange at Edinburgh on Monday was L. 713, and the Paisley Branch was L. 970 against; so that you see what occasion there is for remitting Sir William Forbes and Company.

Greenock, 14th March 1793.

I am favoured with your letter of yesterday; and after what I wrote you as to remitting Sir William Forbes and Company from the funds of the Bank, I trusted that I should not have had occasion to say another word to you on that subject. The Bank's money must be forthcoming to answer the demands and pay the debts of the Bank; and I trust to hearing from you in course, advising that you have remitted to Sir William Forbes and Company at least five thousand pounds to-morrow or Saturday. If you cannot get Edinburgh bills, you must remit in notes, if you should send them by a careful trusty person on purpose, by one of the flies, or by express, on Saturday morning. If you do not comply with this, I shall be under the disagreeable necessity of writing to Sir William Forbes and Company, advising them the reason of their not being remitted; and I shall see you in Glasgow the beginning of the week, in my way to Edinburgh, as I am determined that the credit of the Bank shall not be hurt, if it is in my power to prevent it.

Mr Caldwell will return you the two bills which you sent on London, as they cannot be discounted; for at this time it would hurt us very much with our Bankers, by their seeing us enter into such unguarded transactions, by drawing upon them, in exchange for such paper. Had these bills been on Simon Fraser, they would have been discounted. You had best send these two bills to Sir William Forbes and Company; they will answer in part of your Edinburgh remittance.

At this time we cannot be too careful about the credit of the Bank. And, in the first place, you will prepare to pay up the whole of the Bank's money in your hands, if there should be occasion

cation for it, and your proportion of what further may be wanted.

The Bank is not well supplied at present with gold and silver. Please to advise if you can assist in procuring any at this time.

Your bills on Mr Simon Fraser, the one due next month, and the other at 60 days, will both go forward to London on Saturday ensuing, so that you will advise accordingly. Depending on bearing that you have made the remittances to Sir William Forbes and Company, I am, &c.

Greenock, 16th March 1793.

I received your sundry favours, the last of which this evening; and I observe the contents. As I am to be in Glasgow on Wednesday, it would be improper in you I think to come here on Monday. You had better to remain at home, and make all the exertions in your power to remit to Sir William Forbes and Company that day and on Tuesday; and I trust that you will at least remit them in these two days five thousand pounds, and as much more as you can, either in bills or notes by the box. I suppose your sending them Mess. Lindsay, Smith, and Company's bill on their friends in London, to Sir William Forbes and Company, would be an easy way for you to make your remittance in part.

Our exchange at Edinburgh yesterday was above L. 3800. After this, please to keep no more of our notes in Glasgow, but send down the whole exchange. The Bank will send you a good many notes on Monday.

Your two bills on Mr Fraser, as formerly advised, go forward. I shall inform you on Wednesday if the Bank can spare you any London bills. You know that I am always willing to accommodate you, as far as the Bank can do it with any degree of convenience; therefore I trust that you will exert yourself in remitting Sir William Forbes and Company.

Greenock, 18th March 1793.

I wrote you on Saturday evening, and to which I refer you. Since I am not favoured with any letter from you, allow me to again request that you will, as this day or to-morrow, exert yourself to remit Sir William Forbes and Company at least five thousand pounds. I most sincerely wish that you would square their account. To assist you in so doing, I shall on Wednesday, when I
see

see you, draw for some of my own money in London at sight, which I suppose you can dispose of at 55 days, say fifty-five days par, which I understand London bills now sell at in Glasgow.

Messrs. Houstoun, Macdowall, and Company, have received to-day from the Bank, for a bill due, L. 400. Speak with them, so as to prevent it, if possible, from going into any of the Banks, so as to go to Edinburgh; and you will please not to keep any notes of to-morrow's exchange, but send the whole down to the Bank, as I wish to take every possible method to keep our exchange as low as possible.

Greenock, 19th March 1793.

I am favoured with your letter of yesterday's date. In answer thereto, it was not from the money sent you yesterday that I expected you to make the remittances to Sir William Forbes and Company, it was from the Bank-money otherwise in your hands. I shall see you to-morrow, and I then hope to learn from you that you have made a considerable remittance to Sir William Forbes and Company.

STATE

Our exchange at Edinburgh yesterday was above L. 3800. At this rate, it is not possible to keep no more of our notes in Glasgow, but send down the whole exchange. The Bank will send you a good many notes on Monday. Your two bills on Mr. Fraser, as formerly advised, go forward. I shall instruct you on Wednesday if the Bank can spare you any London bills. You know that I am always willing to accommodate you, as far as the Bank can do it with any degree of convenience; therefore I trust that you will exert yourself in returning Sir William Forbes and Company.

Greenock, 18th March 1793.
I wrote you on Saturday evening, and to which I refer you. Since I am not favoured with any letter from you, allow me to again request that you will, as this day or to-morrow, exert yourself to remit Sir William Forbes and Company at least five thousand pounds. I most sincerely wish that you would spare their account. To shut you in to-day, I shall on Wednesday, when I see

N^o VI.

STATE of BALANCES against Mr DUNLOP, arising upon his Transactions on account of the Company, from January 1792 to Mr DUNLOP's Failure.

	L.	s.	d.		L.	s.	d.
1791.				1792.	700,536	12	3
Dec. 31. By balance,	10895	13	7	Aug. 16. By balance,	31654	9	8
1792.				23. Ditto,	33279	3	6
Jan. 3. Ditto,	12333	2	9	31. Ditto,	27431	3	5
10. Ditto,	14371	4	9	Sept. 5. Ditto,	26540	4	3
20. Ditto,	15010	5	6	15. Ditto,	26146	13	1
30. Ditto,	16029	1	0	24. Ditto,	24365	4	5
31. Ditto,	14703	12	3	29. Ditto,	22050	7	3
Feb. 7. Ditto,	15155	9	10	Oct. 4. Ditto,	24989	15	3
16. Ditto,	18305	19	8	17. Ditto,	21892	8	4
28. Ditto,	24402	3	9	27. Ditto,	20586	0	6
29. Ditto,	24520	1	11	31. Ditto,	22570	12	6
Mar. 4. Ditto,	27938	5	4	Nov. 3. Ditto,	23219	9	9
13. Ditto,	21044	1	3	14. Ditto,	24499	4	10
24. Ditto,	19784	13	3	22. Ditto,	23951	9	11
31. Ditto,	18620	2	11	30. Ditto,	23917	1	1
April 6. Ditto,	19385	1	5	Dec. 8. Ditto,	17385	19	5
14. Ditto,	21746	12	8	13. Ditto,	20299	13	1
26. Ditto,	17663	2	10	22. Ditto,	14818	9	8
30. Ditto,	16611	18	1	31. Ditto,	14103	5	7
May 7. Ditto,	19562	13	9	1793.			
15. Ditto,	18466	4	5	Jan. 8. Ditto,	19341	12	1
24. Ditto,	20988	0	9	17. Ditto,	23399	1	1
31. Ditto,	23330	2	3	26. Ditto,	21701	19	5
June 5. Ditto,	23657	5	3	31. Ditto,	24611	8	7
13. Ditto,	20165	3	5	Feb. 6. Ditto,	20280	0	0
21. Ditto,	25112	10	5	14. Ditto,	21215	5	7
28. Ditto,	23880	0	9	23. Ditto,	21589	15	8
30. Ditto,	29955	11	5	28. Ditto,	21650	9	3
July 3. Ditto,	33110	8	7	Mar. 2. Ditto,	18715	10	6
10. Ditto,	34876	6	8	9. Ditto,	19575	12	10
21. Ditto,	35241	13	8	16. Ditto,	17643	17	1
31. Ditto,	33125	5	6	20. Ditto,	15826	13	0
Aug. 8. Ditto,	32964	12	8	23. Ditto,	16598	10	5
L. 700,536 12 3				L. 1,406,386 14 3			

1. 200,000